TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~283.~~ 95

THE PRESIDENT, MANAGERS, AND COMPANY OF THE DELAWARE AND HUDSON CANAL COMPANY, APPELLANTS,

vs.

HENRY C. CLARK.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

94

FILED NOVEMBER 17, 1870.

SUPREME COURT OF THE UNITED STATES.

No. 293.

THE PRESIDENT, MANAGERS, AND COMPANY OF THE DELAWARE AND HUDSON CANAL COMPANY, APPELLANTS,

vs.

HENRY C. CLARK.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

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a UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, Kenneth G. White, clerk of the circuit court of the United States of America for the southern district of New York, in the second circuit, do hereby certify that the foregoing pages, numbered from one to 356, inclusive, contain a true and complete transcript of the record and proceedings had in said court in the case of The President, Managers, and Company of the Delaware and Hudson Canal Company against Henry C. Clark, as the same remain of record and on file in said office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this 10th day of November, in the year of our Lord one thousand eight hundred and seventy, and of the independence of the said United States the ninety-fifth.

[SEAL.] KENNETH G. WHITE, *Clerk.*

[Five-cent internal revenue stamp affixed and canceled.]

1 The President of the United States of America to Henry C. Clark, greeting:

You are hereby commanded that you personally appear before the judges of the circuit court of the United States of America for the southern district of New York, in the second circuit court, in equity, on the first Monday of February, A. D. 1870, wherever the said court shall then be, to answer a bill of complaint exhibited against you in the said court by The President, Managers, and Company of the Delaware and Hudson Canal Company, and to do further and receive what the said court shall have considered in that behalf. And this you are not to omit under the penalty on you of two hundred and fifty dollars.

Witness the Hon. Salmon P. Chase, Chief Justice of the Supreme Court of the United States, at the city of New York, on the second day of January, in the year one thousand eight hundred and seventy, and of the independence of the United States of America the ninety-first.

[SEAL.] KENNETH G. WHITE, *Clerk.*

OWEN, GRAY & OWEN,
Compl'ts' Sol'rs.

The defendant is required to enter appearance in the above cause in the clerk's office of this court on or before the first Monday of February, 1870, or the bill will be taken pro confesso against him.

2 K. G. W., *Clerk.*

3 In equity.

To the judges of the circuit court of the United States for the southern district of New York:

The President, Managers, and Company of the Delaware and Hudson Canal Company, a corporation created by, and existing under, the laws of the State of New York, bring this, their bill, against Henry C. Clark, of Providence, Rhode Island, and a citizen of the State of Rhode Island, and thereupon your orators complain against the said Henry C. Clark, the defendant herein, and say:

First. That before and at the several times hereafter stated, your

orators were, and still are, a corporation created by, and organized under, an act of the legislature of the State of New York, and had, and now have, their principal office and place of business in the city of New York.

Second. That in or about the year 1825, under the powers and franchise conferred upon your orators by their charter, and by other legislative enactments, they purchased, and became, and were, and still are, seized and possessed of a large quantity of land in the State of Pennsylvania, in which there were, and are, extensive beds of coal;
4 and, in order to mine out and bring such coal to market, they constructed, and have ever since maintained at great expense, a canal extending from Roundout, on the Hudson River, to Honesdale, in the State of Pennsylvania, commonly called the "Delaware and Hudson Canal," together with a railroad from Honesdale to their aforesaid coal lands; and thereupon afterwards, and in or about the year 1828, they commenced to bring their said coal to market.

Third. That at or about the time they so commenced bringing their aforesaid coal to market, in the year 1828, your orators sought out, devised, and adopted the name of "Lackawanna coal," as a special, particular, and distinctive name or trade-mark for their coal, and by which they could introduce the same to the favorable notice of dealers and consumers as the product of their mines, in distinction from the coal of other parties.

Fourth. That when your orators so adopted and appropriated the word "Lackawanna" as a name or trade-mark for their coal as aforesaid, the same had never been adopted, used, or applied, in combination with the word coal, as a name or trade-mark for any kind of coal; and your orators were the first to adopt and use the same for that purpose and in that way; that, ever since such adoption and use, their coal has been universally, and at all times, called and known in market,
5 and bought and sold by dealers and consumers, under and by the aforesaid name of "Lackawanna coal," and it has not, to the knowledge or belief of your orators, been called or known by any other name; that, by great and continued exertions, and at a large expense, your orators have succeeded in establishing a high reputation for their aforesaid "Lackawanna coal" for the purposes of heating and for generating steam, insomuch that it is much sought after, and commands a higher price than almost any other kind of anthracite coal; that the trade therein, and the consumption thereof, has been gradually and constantly increasing from the time it was first brought to market until the present; that the sale thereof will amount, during the year 186ß, to over one million three hundred thousand tons; and your orators have reason to believe, and do believe, that the sale thereof will continue to increase, unless prevented by the wrongful acts of the defendant, hereafter more particularly stated.

Fifth. That your orators have coal yards and depots, wherein they keep for sale their aforesaid "Lackawanna coal;" and, besides this, they also sell and deliver their said coal to merchants and dealers in coal, who keep it in their yards for sale, and who advertize, sell, and dispose of the same simply and exclusively by the name of "Lackawanna coal." In these ways your orators have been enabled to sell and dispose
6 of their said coal, and to derive gains and profits therefrom.

That, for a number of years past, your orators have sold and consigned, and still continue to sell and consign annually, large quantities of the said "Lackawanna coal" for sale and consumption in the

city of Providence, and in its vicinity; and certain dealers in that city keep on hand for sale, and advertize and sell your orators' coal by and under the aforesaid name of "Lackawanna coal;" that in this way, among others, your orators' coal has become, and is, extensively and favorably known in that market by its aforesaid name, insomuch that the demand therefor has been, and is, steadily increasing; and the name in that vicinity and elsewhere has become, and is, of great value to your orators in establishing and maintaining the individuality and identity of their coal, causing it to become and be well and familiarly known to dealers and consumers.

Sixth. That the defendant has been for years past, and still is, a citizen of the State of Rhode Island, residing at the said city of Providence, where he has carried on, and still carries on, the business of a coal merchant, or dealer in coal, and for that purpose he owns or occupies a yard in which he keeps anthracite coal for sale; that he does not purchase, keep, or have for sale, any of your orators' "Lackawanna
7 coal;" but he buys, sells, and deals altogether and exclusively in other and different kinds of anthracite coal, and which have been named by the producers thereof, and are generally called and known by the name of "Scranton coal" and "Pittston coal," which is produced by other and different companies, who have, for their profit and convenience, adopted and given thereto the aforesaid distinctive names of Scranton and Pittston; that although no part of the coal in which the defendant deals comes from the mines of your orators, yet it is of the same general appearance as your orators' "Lackawanna coal," and it cannot be easily distinguished therefrom by inspection, and, in consequence thereof, the public may easily be deceived in their purchases, unless the names given to the respective coals by the original producers thereof, as aforesaid, be fairly, truthfully, and honestly used and applied at all times in the sale thereof.

Seventh. That the defendant, well knowing the premises hereinbefore stated, and that his coal did not, and does not, command so high a price in market as your orators' "Lackawanna coal," contriving and intending to injure your orators, and to deceive the public, has been, and is, (as your orators have lately ascertained,) wrongfully and fraudulently selling and offering for sale his aforesaid Scranton and Pittston coal,
8 by the name of, and as and for "Lackawanna coal," and to carry out and effect such fraud and deception he has erected, or caused to be erected, and has, a sign upon or at his coal-yard, whereon is painted or inscribed the name of "Lackawanna coal," thereby falsely and fraudulently representing and designing and intending to have the public to understand and believe that he keeps and has for sale your orators' "Lackawanna coal;" that, in order further to carry out his aforesaid false and fraudulent designs and intentions, and to injure your orators in the sale of their aforesaid coal, he has falsely advertized, and continues to advertize in the public newspapers printed in the city of Providence that he has for sale "Lackawanna coal," whereas in truth and in fact he has not any of such coal. And further, that the defendant has been, and is, as your orators are informed and believe, selling and offering to sell his said coal as and for the "Lackawanna coal" of your orators; that he is in these ways pirating and wrongfully and fraudulently using your orators' aforesaid name or trade-mark, and is thereby injuring them in the sale of their "Lackawanna coal," and deceiving the public.

9 Eighth. That your orators have applied to the defendant and

requested him to desist and refrain from selling or offering his coal for sale under the name of "Lackawanna coal," and from keeping up his aforesaid sign, or advertizing his coal as "Lackawanna coal," or selling the same as and for the coal of your orators. Nevertheless, the defendant, while he admits that he has not and does not keep for sale any of your orators' coal, refuses to comply with such reasonable request, but continues his false and fraudulent practices above stated to the great injury of your orators and the detriment of the public. And as an excuse for such wrongful and fraudulent acts, he gives out and pretends that his coal comes from a region of country in the State of Pennsylvania, known as the Lackawanna region or valley, and that, therefore, he is entitled to advertize and sell his coal by the name of Lackawanna coal, but your orators aver the contrary to be true. They further aver that his coal is sold and delivered to him by the original producers thereof under their distinctive trade-mark or name of "Pittston coal" and "Scranton coal," so given to the same by the producers thereof as above stated, and that the greater portion thereof, if not all, is taken from the valley or region more properly known as the Wyoming Valley. They further aver that the word "Lackawanna" has come into use as the name of a valley from the adoption and use thereof by
10 your orators as the name of their coal, previous to which the valley had been and was known and called "Lackawannuck."

Ninth. That although the word Lackawanna has of late years been and is used as part of the names of certain railroads, and of the valley or region aforesaid, yet when it was adopted by your orators as their trade-mark as aforesaid it was not in common use, nor had it ever been used or combined with the word coal so as to form the compound word or term "Lackawanna coal," nor has it at any time since been so used by any producer of coal except your orators. And your orators claim and insist that, so far as respects the use of the word as applied to coal, they have a prior and exclusive right thereto, in which they should be protected. That the use of your orators aforesaid trade-mark or name by the defendant is fraudulent, and is used with the design to obtain for his coal the reputation and credit due to and possessed by your orators' coal, and to injure your orators in the premises.

Your orators further say that they have never in any manner authorized the defendant to use or apply such name to his coal, nor have they in any wise acquiesced in his use thereof, but that his acts in the premises have been and are in violation of their rights.

They further say that they fear, and have reason to fear, that the defendant, unless restrained by the injunction of this court, will con-
11 tinue to offer to sell, and to sell his coal by the name of and as and for "Lackawanna coal," and will maintain his sign with the name thereon as aforesaid, and will advertize his said coal as "Lackawanna coal," and will falsely induce the public to believe that he has for sale the "Lackawanna coal" of your orators, and will thereby injure your orators and deceive the public in the premises. Your orators further say that the damages which they have sustained, and the value of the matter in dispute in this action exceeds, exclusive of costs, the sum of two thousand dollars.

To the end, therefore, that the defendant may, if he can, show why your orators should not have the relief hereby prayed, and that he may, according to the best and utmost of his knowledge, remembrance, information, and belief, full, true, direct, and perfect answers make to all and singular the above-mentioned allegations.

And your orators pray that the defendant and his agents may be enjoined and restrained from keeping or using a sign over or upon or about his coal-yard or place of business with the words "Lackawanna coal," or "Lackawanna," painted or inscribed thereon, and from advertizing "Lackawanna coal" for sale, and from selling or offering or attempting to sell his aforesaid coal or any coal (which does not come from your orators' mines) under or by the name of "Lackawanna coal," and that he may account for or pay to your orators whatever profits he may have realized from the use of your orators' name or trade-mark, and
12 from the sale of his coal under or by the name of "Lackawanna coal," and that your orators may have such further or other order or relief in the premises as the nature of the case may require, and as shall be agreeable to equity—

May it please your honors, the premises considered, to grant unto your orators the writ of injunction to be issued out of and under the seal of this honorable court, to be directed to the defendant and his agents therein, and thereby commanding and enjoining him and them in the manner hereinbefore stated.

And may it also please your honors to grant unto your orators the writ of subpœna to be issued out of and under the seal of this honorable court, to be directed to the defendant therein, and thereby commanding him on a certain day, and under a certain penalty, to be therein expressed, personally to be and appear before this honorable court, then and there to answer the premises, and to stand to, abide by, and perform such order and decree therein as to this court shall seem proper, and as shall be agreeable to equity and good conscience.

J. N. SEYMOUR,
Treasurer.

OWEN, GRAY & OWEN,
Compl'ts' Solicitors.
E. H. OWEN,
Of Counsel for the Complainants.

13 SOUTHERN DISTRICT OF NEW YORK, *ss:*

Isaac N. Seymour, being duly sworn, says that he is the treasurer of The President, Managers and Company of the Delaware and Hudson Canal Company, the complainants in the foregoing bill named; that he has read the foregoing bill of complaint, and knows the contents thereof; and that the matters therein contained are true of his own knowledge, except as to those matters which are therein stated to be upon the information and belief of the complainants, and as to those matters he believes it to be true.

ISAAC N. SEYMOUR.

Sworn to before me this 31st day of December, 1866.
JOHN J. RICE,
Notary Public N. Y. County.

(Endorsed:) U. S. circuit court. In equity. The President, Managers, and Company of the Delaware and Hudson Canal Company vs. Henry C. Clark. Bill of complaint. Owen, Gray & Owen, comp'ts' sol'rs. Filed Jan'y 2, 1867.

14

requested him to desist and refrain from selling or offering his coal for sale under the name of "Lackawanna coal," and from keeping up his aforesaid sign, or advertizing his coal as "Lackawanna coal," or selling the same as and for the coal of your orators. Nevertheless, the defendant, while he admits that he has not and does not keep for sale any of your orators' coal, refuses to comply with such reasonable request, but continues his false and fraudulent practices above stated to the great injury of your orators and the detriment of the public. And as an excuse for such wrongful and fraudulent acts, he gives out and pretends that his coal comes from a region of country in the State of Pennsylvania, known as the Lackawanna region or valley, and that, therefore, he is entitled to advertize and sell his coal by the name of Lackawanna coal, but your orators aver the contrary to be true. They further aver that his coal is sold and delivered to him by the original producers thereof under their distinctive trade-mark or name of "Pittston coal" and "Scranton coal," so given to the same by the producers thereof as above stated, and that the greater portion thereof, if not all, is taken from the valley or region more properly known as the Wyoming Valley. They further aver that the word "Lackawanna" has come into use as the name of a valley from the adoption and use thereof by your orators as the name of their coal, previous to which the valley had been and was known and called "Lackawannuck."

Ninth. That although the word Lackawanna has of late years been and is used as part of the names of certain railroads, and of the valley or region aforesaid, yet when it was adopted by your orators as their trade-mark as aforesaid it was not in common use, nor had it ever been used or combined with the word coal so as to form the compound word or term "Lackawanna coal," nor has it at any time since been so used by any producer of coal except your orators. And your orators claim and insist that, so far as respects the use of the word as applied to coal, they have a prior and exclusive right thereto, in which they should be protected. That the use of your orators aforesaid trade-mark or name by the defendant is fraudulent, and is used with the design to obtain for his coal the reputation and credit due to and possessed by your orators' coal, and to injure your orators in the premises.

Your orators further say that they have never in any manner authorized the defendant to use or apply such name to his coal, nor have they in any wise acquiesced in his use thereof, but that his acts in the premises have been and are in violation of their rights.

They further say that they fear, and have reason to fear, that the defendant, unless restrained by the injunction of this court, will continue to offer to sell, and to sell his coal by the name of and as and for "Lackawanna coal," and will maintain his sign with the name thereon as aforesaid, and will advertize his said coal as "Lackawanna coal," and will falsely induce the public to believe that he has for sale the "Lackawanna coal" of your orators, and will thereby injure your orators and deceive the public in the premises. Your orators further say that the damages which they have sustained, and the value of the matter in dispute in this action exceeds, exclusive of costs, the sum of two thousand dollars.

To the end, therefore, that the defendant may, if he can, show why your orators should not have the relief hereby prayed, and that he may, according to the best and utmost of his knowledge, remembrance, information, and belief, full, true, direct, and perfect answers make to all and singular the above-mentioned allegations.

And your orators pray that the defendant and his agents may be enjoined and restrained from keeping or using a sign over or upon or about his coal-yard or place of business with the words "Lackawanna coal," or "Lackawanna," painted or inscribed thereon, and from advertizing "Lackawanna coal" for sale, and from selling or offering or attempting to sell his aforesaid coal or any coal (which does not come from your orators' mines) under or by the name of "Lackawanna coal," and that he may account for or pay to your orators whatever profits he may have realized from the use of your orators' name or trade-mark, and
12 from the sale of his coal under or by the name of "Lackawanna coal," and that your orators may have such further or other order or relief in the premises as the nature of the case may require, and as shall be agreeable to equity—

May it please your honors, the premises considered, to grant unto your orators the writ of injunction to be issued out of and under the seal of this honorable court, to be directed to the defendant and his agents therein, and thereby commanding and enjoining him and them in the manner hereinbefore stated.

And may it also please your honors to grant unto your orators the writ of subpœna to be issued out of and under the seal of this honorable court, to be directed to the defendant therein, and thereby commanding him on a certain day, and under a certain penalty, to be therein expressed, personally to be and appear before this honorable court, then and there to answer the premises, and to stand to, abide by, and perform such order and decree therein as to this court shall seem proper, and as shall be agreeable to equity and good conscience.

J. N. SEYMOUR,
Treasurer.

OWEN, GRAY & OWEN,
Compl'ts' Solicitors.
E. H. OWEN,
Of Counsel for the Complainants.

13 SOUTHERN DISTRICT OF NEW YORK, *ss:*

Isaac N. Seymour, being duly sworn, says that he is the treasurer of The President, Managers and Company of the Delaware and Hudson Canal Company, the complainants in the foregoing bill named; that he has read the foregoing bill of complaint, and knows the contents thereof; and that the matters therein contained are true of his own knowledge, except as to those matters which are therein stated to be upon the information and belief of the complainants, and as to those matters he believes it to be true.

ISAAC N. SEYMOUR.

Sworn to before me this 31st day of December, 1866.
JOHN J. RICE,
Notary Public N. Y. County.

(Endorsed:) U. S. circuit court. In equity. The President, Managers, and Company of the Delaware and Hudson Canal Company vs. Henry C. Clark. Bill of complaint. Owen, Gray & Owen, comp'ts' sol'rs. Filed Jan'y 2, 1867.

14

15 SOUTHERN DISTRICT OF NEW YORK, *ss:*

Circuit court of the United States. In chancery.

DELAWARE & HUDSON CANAL CO.
vs.
HENRY C. CLARK.

The defendant in said cause hereby enters his appearance therein.
By his solicitor,

JAMES TILLINGHAST.

(Endorsed:) Filed Jan'y 11, 1867.

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17 In the United States circuit court for the southern district of New York, in the second circuit, in equity.

THE PRESIDENT, MANAGERS, AND COMPANY of the Delaware and Hudson Canal Company.
against
HENRY C. CLARK.

SIR: You will please take notice that we have been retained by the defendant, Henry C. Clark, above named, and request that you will enter our appearance as solicitors for him in the above-entitled suit.
Dated New York, February 2d, 1867.
Yours, &c.

FULLERTON, KNOX & RUDD,
Defendant's Sol'rs.

To KENNETH G. WHITE, Esq.,
Clerk of U. S. Circuit Court.

18 (Indorsed:) In the United States circuit court of the southern district of New York, in the second circuit. In equtiy. The Presdent, Managers, and Company of the Delaware and Hudson Canal Co., ag'st Henry C. Clark. Notice of appearance. Fullerton, Knox & Rudd, def't's sol'rs, 11 Pine st., N. Y. Filed Feb'y 4, 1867.

19 In equity. U. S. circuit court.

The answer of Henry C. Clark, defendant, to the bill of complaint of the President, Managers, and Company of the Delaware & Hudson Canal Company, complainants.

This defendant now, and all times hereafter, saving and reserving to himself all manner of benefit and advantage of exception, which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said complainants' said bill of complaint contained, for answer thereunto, or unto so much and such part or parts thereof, as this defendant is advised is or are material or necessary for him to make answer unto, answering saith, that he admits the averments in the first and second paragraphs or subdivisions of the complainants' said bill of complaint contained to be true, and as in the bill is mentioned in that behalf.

And the defendant, further answering, denies that the com-
20 plainants did, at time, seek out, devise, or adopt the name of "Lackawan'a coal," as a special or distinctive name or trade-mark for their coal, or that their said coal commands a higher price in the market than most other varieties of anthracite coal coming from the Lackawan'a regions, and he avers that he has no knowledge or information sufficient to form a belief as to whether their averments, in regard to the past and prospective increase of their business, and the amount of said business during the year 1866, are true.

He denies that the coal of the complainants, is or has been advertized or disposed of simply or exclusively by the name of "Lackawan'a coal;" he avers that said coal has been repeatedly sold by the complainants themselves under another name; and he denies that the said name of Lackawan'a coal ever has been, or now is, either in the city of Providence and vicinity, or elsewhere, the peculiar property and trade-mark of the complainants, or of value or benefit to them as maintaining or establishing the individuality or identity of their coal as distinguished
from the coal of other companies carrying on the business of
21 the mining of coal in the Lackawan'a regions.

The defendant admits that he has been, and is, a citizen of the State of Rhode Island, and that he has been, and still is, engaged in business as a dealar in coal in said city; and that he occupies a yard in which he keeps anthracite coal for sale; and that he does not purchase or keep for sale any of complainants' Lackawan'a coal; and that he deals almost exclusively in the varieties of coal mentioned in the bill of complaint by the names of Scranton coal and Pittston coal, but he denies that the said varieties of coal are exclusively known by those names; and he avers the contrary to be true; he alleges that said two varieties of coal are generally known by the name of Lackawan'a coal; and he avers that the same are so regarded and so styled by dealers in coal and by the public *general;* and that they are so known in the statistics of the coal trade, and in the publications relating to the same;
and that they have been repeatedly dealt with an' designated
22 by said name of Lackawan'a coal by the complainants. He admits that the said two varieties of coal are of the same general appearance as the coal *as the coal* of the complainants; and he avers that the coal of the complainants is of no better quality, and commands no higher price in the market than the said so-called Pittston & Scranton coals.

The defendant denies each and every allegation in the seventh paragraph or subdivision of said bill of complaint contained, excepting only that he is advertising and selling the two varieties of coal mentioned therein as Scranton and Pittston coal, by the name of, and as and for, Lackawan'a coal, & that he has a sign upon his yard, whereon is inscribed the name "Lackawanna coal," which averments he admits to be true. He avers that said sign "Lackawanna coal" has been upon his said premises during the last seven or eight years; and that during the greater part of said period, the premises adjoining the said coal-yard of
this defendant, have been used and occupied by the complainants
23 or by persons in their employment and interest for the purpose of selling their coal; and he avers that, during said period, he has advertised and sold large quantities of the said two varieties of coal mentioned in the bill of complaint as Pittston coal & Scranton coal under and by the name of Lackawanna coal; and he avers that, during the whole of the above period, and for a considerable number of years previous thereto, he had not purchased any of the coal of the complainants, nor offered any of the same for sale, as said complainants well knew.

The defendant avers that he has been actively engaged in business as a dealer in coal in the city of Providence for the last 27 years, and he alleges that from about the year 1850, and up to the commencement of this suit, the dealers in coal throughout the country have regularly sold the said so-called Scranton coal & Pittston coal under the general name of Lackawanna coal; and he avers that this has been done to a very great extent, and to the knowledge of the complainants and their agents, and without objection on their part; and he alleges that
24 the two said varieties of coal have been frequently, during said period, sold by the agents of the complainants, and by persons in their interest, to this defendant and others, under the name and as and for Lackawanna coal; and defendant avers that he has, during the said period, purchased quantities of the so-called Pittston coal from the complainants as and for Lackawanna coal, and that the price paid therefor was the full market price for Lackawanna coal, and that no deduction from said price was made by complainants on account of said coal being of the variety mentioned in the bill of complaint as Pittston coal.

Defendant avers that the complainants have repeatedly admitted that they had no exclusive right to, or property in, the name "Lackawanna," and that in the month of January, 1860, they issued a circular, in which they cautioned consumers of Lackawanna coal against coals not coming from their company, and directed buyers to "ask for Lackawanna that comes directly from the Delaware & Hudson Canal Company," and he avers that the complainants never made any claim or pretence
25 that they were entitled to the exclusive use of the name "Lackawanna coal," to the knowledge of defendant, until a short time prior to the commencement of this action.

Defendant denies that his coal is sold or delivered to him under the distin'tive name or trade-mark of Pittston coal or Scranton coal, and he avers that he purchases the same as coming from the Lackawanna or Wyoming regions, and that the said coal is as truly and properly styled Lackawanna coal as the coal of the complainants.

He denies that the complainants requested him to desist or refrain from keeping up his said signs, or offering or advertising for sale his coal under the name of Lackawanna coal, or as and for the coal of the complainants, and he wholly denies that he has intented or practised any falsehood, fraud, or deceit in advertising, offering for sale, or selling any of the above-mentioned varieties of coal, either towards the complainants or any other person whatsoever.

He denies that the word "Lackawanna" has come into use as the name of a valley from its adoption or use by the complainants as the name of their coal, or that previous to such adoption the name of
26 said valley had been known as and called "Lackawannuck."

He avers that said valley, and the river running through it, had been known as early as the year 1774 by the name "Lockawanna," and as early as the year 1796 by the name "Lackawanna," & were so mentioned and described in deeds and other ancient documents, and he avers that the said name "Lackawanna" had been in general use as the name of such valley for many years at the time of its first use by the complainants. He denies that the compound word or term "Lackawanna coal" has been used by no other producers of coal than the complainants, and he avers that the statistics of the coal trade show that a corporation publicly known as the "Boston & Lackawanna Coal Co." has operated mines in the neighborhood of those belonging to the complainants, and produced and sold large quantities of coal therefrom.

The defendant denies that the complainants have a prior or exclusive

right as respects the use of the word "Lackawanna," as applied to coal, or that they are entitled to any protection in respect thereto. He
27 avers that even if such prior right to said use of said word or term had existed as to constitute a trade-mark, such right and all claim to protection in reference to the same have been wholly lost to the complainants by their long-continued abandonment of the same and their acquiescence in the common and general use of said word or term by the coal trade and public, as relating to, and being properly the designation of, all coals mined and produced in the said Lackawanna Valley.

The defendant denies each and every allegation in the said bill of complaint contained inconsistant with the averments of this answer not hereinbefore specifically controverted.

And this defendant denies all and all manner of unlawful combination & confederacy wherewith he is by the said bill charged, without this, that there is any other matter, cause, or thing in the said complainants' said bill of complaint contained material or necessary for this defendant to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided, or denied, is true, to the knowledge or belief of this defendant; all which mat-
28 ters and things this defendant is ready & willing to aver, maintain, and prove, as this honorable court shall direct, and humbly prays to be here dismissed, with his reasonable costs and charges in this behalf most wrongfully sustained.

HENRY C. CLARK.

FULLERTON, KNOX & RUDD, *Sol'rs for Def't.*
W'M FULLERTON, *of Counsel.*

RHODE ISLAND DISTRICT, &C., CITY OF PROVIDENCE,
April 5th, 1867.

Henry C. Clark, being first duly sworn, deposes & says that he is the defendant in the above-entitled action; that he has read the foregoing answer, and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters which are therein stated to be on information and belief; and as to those, he believes it to be true.

Before me, SAM'L W. PECKHAM,
Commissioner appointed by the Circuit Court of the United States for said Rhode Island District to take Affidavits and Bail.

29 (Endorsed:) U. S. circuit court. In equity. The President and Managers & Co. of the Delaware & Hudson Canal Co. vs. Henry C. Clark. Answer. Fullerton, Knox & Rudd, def't's sol'rs, 11 Pine st, N. Y. Filed Apr'l 11, '67.

30

31 U. S. circuit court for the southern district of New York.

THE PRESIDENT, MANAGERS, & COMPANY OF THE Delaware & Hudson Canal Company
vs.
HENRY C. CLARK.

The replication of the president, managers, & company of the Delaware and Hudson Canal Company, complainants, to the answer of Henry C. Clark, defendant.

These repliants, saving and reserving to themselves, now and at all

times hereafter, all and all manner of benefit and advantage of exception which may be had or taken to the many errors, uncertainties, and insufficiencies of the answer of the said defendant, for replication thereto say that they will aver, maintain, & prove their bill of complaint to be true, certain, and sufficient in law to be answered unto; and that the said answer is uncertain, untrue, and insufficient to be replied unto by these repliants without this, that any other matter or thing
32 whatsoever in the said answer contained material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true; all which matters and things these repliants are and will be ready to aver, maintain, and prove as this honorable court shall direct, and humbly pray as in and by their said bill of complaint they have already prayed.

OWEN, GRAY & OWEN,
Complainants' Solicitors.

(Endorsed:) U. S. circuit court. The President, Managers, and Company of the Delaware and Hudson Canal Company vs. Henry C. Clark. Replication. Owen, Gray & Owen compl'ts' sol'rs. Filed Ap'l 20, '67.

33 Circuit court of the U. States, southern district of New York.

THE PRESIDENT, MANAGERS, & CO. OF THE DELAWARE & HUDSON CANAL CO.
vs.
HENRY C. CLARK.

Testimony taken on the part of complainants for final hearing by Richard E. Stilwell, examiner, &c., under the 67th rule of the Supreme Court of the United States.

FRIDAY, *June* 21*st*, 1867.

Present, E. H. Owen, esq., counsel for complainant; Henry E. Knox, esq., counsel for defendant.
Adjourned to June 25th, at 3½ p. m.

TUESDAY, *June*, 25*th*, 1867.

Present, counsel as before.
Adjourned to July 2d, at 3½ p. m.

TUESDAY, *July* 2*d*, 1867.

Present, counsel as before.
34 Adjourned to July 9th, at 2 p. m.

TUESDAY, *July* 9*th*, 1867.

Present, counsel as before.
Adjourned to July 26th, at 2 p. m.

FRIDAY, *July* 26, 1867.

Present, counsel as before.
Adjourned to the 4th October, at 2½ p. m.

FRIDAY, *October* 4*th*, 1867.

Present, E. H. Owen, esq., counsel for complainants; esq., counsel for defendants.

JAMES C. HARTT, called and sworn as a witness on the part of complainant, deposes and says:

Q. 1. What is your age and occupation?

A. 45 years of age, and am sales agent of the complainants.

Q. 2. How long have you been connected with the complainants, and in what several capacities?

A. Since February, 1850; as book-keeper until December, 1854.

35 From that time till March, 1866, as secretary; since the last dates as sales agent.

Q. 3. State generally what your duties are as sales agent.

A. To negotiate the sale of the coals produced by the company, with a general supervision over its delivery.

Q. 4. State about what time the complainants were incorporated?

A. April 23d, 1823. The company is incorporated by an act of the legislature of the State of New York.

Q. 5. What has been and is the general business of the complainants?

A. Mining, bringing to market, and selling anthracite coal, besides maintaining their canal, (commonly called the Delaware and Hudson Canal, which extends from Rondout on the Hudson, to Honesdale in the State of Pennsylvania,) as a highway, and collecting tolls for transit thereon, &c.

Q. 6. Where are the coal lands of the complainants situated?

A. In Luzerne County, Pennsylvania.

Q. 7. Where is the business of the company chiefly carried on?

A. Its principal office is at number 7 Nassau street, in the city of New York, and it always has been in the first ward of the city of New York.

36 Q. 8. About what time did the complainants first commence bringing their coal to market, and selling the same?

A. In the year 1829.

Q. 9. Under and by what name have the complainants sold their coal in the market?

A. Under the name of "Lackawanna coal."

Q. 10. Have they ever sold it or called it by any other name?

A. Positively not within the last seventeen years, and I believe they never have.

Q. 11. Do you know, and if so, state by what name the coal of the complainants is known in market by dealers therein?

A. It is uniformly known as Lackawanna coal. It is not known or dealt in by any other name.

Q. 12. What, if anything, does that name indicate?

A. I have always supposed it to be a name selected by the company, by which to designate their coal, and to distinguish it from coal produced and sold by other parties.

(Objection to so much of the answer as states the supposition of the witness.)

Q. 13. Have other producers distinct names for their coal; and if so, state some of them?

(Obj. to.)

A. Generally they have; I may say almost universally they *are*.

37 The Delaware, Lackawanna and Western Railroad Company produce an anthracite coal which they call the Scranton coal; the Pennsylvania Coal Company call theirs "Pittston;" the Lehigh Coal and Navigation Company call theirs Lehigh coal. There are other companies, and all of which have distinctive names for their own coal, and the coal in market is bought and sold under these distinctive names.

Q. 14. Is there any difference in the general appearance of those various kinds of coal by which dealers can determine, by inspection, the Lackawanna coal from them or either of them?

A. There is a marked difference between the Lackawanna and the Lehigh coal in appearance; but scarcely any between the Lackawanna and the Scranton and Pittston.

Q. 15. State whether or not, under those circumstances, the distinctive name of Lackawanna coal is useful and valuable to the public in the purchase of that coal.

(Obj. to.)

A. I think it is.

Q. 16. State, as nearly as you can, the general annual increase in the production and consumption of the Lackawanna coal since 1829.

A. The first year's business I think was 720 tons. In 1830 it amounted to about 43,000, and in 1866 to 1,300,000; and this year we
38 expect to get a little over 1,400,000 tons.

Q. 17. State generally where market for this coal is found.

A. Along the Hudson River, in this city, and in Brooklyn, and in the principal towns and cities in the eastward as far as Boston. Some goes west to Buffalo and Chicago.

Q. 18. State what yards your company has for the sale of its coal, and how the same is disposed of in cities where you have no yard.

A. Five yards in the city of New York, two in Brooklyn, one in Hoboken, and one in Weehawken, and one at Yonkers. In all other places coal is bought by dealers and sold for their own account.

Q. 19. Has your company any purchasers in Providence, Rhode Island? If so, state whether they purchase for the purpose of selling or to consume.

A. We have purchasers at that place, and have had ever since I have been connected with the company. We once had an agency there. The purchasers for the last four or five years at Providence have been, perhaps, 10 or 12 persons or firms, who buy for consumption directly from the company. The firm of Manchester, Hopkins & Co., are large dealers, and buy from the company to sell again.

Q. 20. State, as near as you can, about what quantity of your coal has been annually sold to such consumers, and what quantity to the
39 firm mentioned.

A. This year and last I think the quantity to consumers has been about 60,000 tons, and to the firm mentioned 40,000 tons each year. For a number of years past our coal has had a large market in that city. I can, by examination, ascertain the quantity more precisely.

Q. 21. State whether or not the demand for the coal of your company has been on the increase; and if so, for what number of years past.

A. I think the demand has steadily increased since 1850.

Q. 22. State how the Lackawanna coal compares in quality and market price with the Scranton and Pittston.

A. For certain purposes, such as the generation of steam, and for domestic uses, the Lackawanna coal is considered to be superior to either of the others, and brings a higher price in market.

Q. 23. For how many years past has that been the fact? and state whether it applies to coal sold in Providence.

A. This has been the case for at least seven years past, to my own knowledge, in this market, and I think for a much longer time; but I cannot speak with any certainty in regard to the Providence market.

Adjourned to the 8th inst., at 1 p. m.

40 TUESDAY, *October* 8th, 1867.

Present, counsel for the respective parties.

Adjourned to the 17th ins't, at 2 p. m.

THURSDAY, *October* 17th, 1867.

Present, counsel for the respective parties.

Adjourned to the 28th, at 2 p. m.

MONDAY, *October* 28th, 1867.

Present, counsel for the respective parties.

Witness continues:

Q. 24. Do you know the defendant in this cause; if so, how long have you known him?

A. I know him by sight. He was pointed out to me about a year ago.

Q. 25. And where does he reside?

A. At Providence, Rhode Island.

Q. 26. Has he ever, to your knowledge, purchased any Lackawanna coal direct from the complainants?

A. He has not.

41 Q. 27. State, if you know, whether or not the defendant has, for some time past, been selling anthracite coal, which was not produced or sold by the complainants, under the name of Lackawanna coal.

A. I have been informed that he has.

(Obj. to.)

Q. 28. Have you had a correspondence with defendant in relation to his selling his coal under the name of Lackawanna coal?

A. I have.

Q. 29. State the date of your first letter to him, and of the subsequent letters received from him and those written to him, and produce the originals and copies.

A. My first letter to him is dated 21st August, 1866, a copy of which I now produce and which is marked Exhibit A. To this I received an answer from defendant, dated 23d August, 1866, which I have not here; but will produce, and it will be marked Exhibit B. I wrote to him an answer to the letter of 23d August, a letter dated 30th of August, 1866, a copy of which I now produce, and which is marked Exhibit C. To that I received an answer dated 31st August, 1866, and which I now produce, and is marked Exhibit D. To that I replied by letter dated 4th September, 1866, a copy of which I produce, and it is marked Exhibit E.

42 Q. 30. Look at the paper pinned to the defendant's letter of August 31st, 1866, and say if that is the advertisement referred to in that letter and came with it.

A. It is the same. The advertisement is in the following words: "Lackawanna coal, 5,000 tons. Lump, broken, and other sizes for sale low by Henry C. Clarke."

Cross examined by Mr. Knox, counsel for defendant:

X 31. What, if any, use have you made of the letter received by you from Mr. Clarke, and referred to in your letter, Exhibit E, dated 4th September, 1866?

(Obj. to.)

A. I caused a portion of it to be published in a Providence paper. I don't recollect of any other.

X 32. State what portions of that letter you caused to be so published. (Obj. to.)

A. It is impossible for me to state from memory; but by reference to my books I can send or furnish an exact quotation of the portion published.

X 33. How do you know that the complainant has not sold or called its coal by any other name than Lackawanna for the last seventeen years?

A. From an intimate knowledge of the company's business, obtained during that time in its service at the principal office in New
43 York.

X 34. What were your duties as clerk of the complainants?

A. To keep its books.

X 35. Where?

A. In New York.

X 36. Did you have any other duties to perform for the complainants up to December, 1854, than to keep its books?

A. Yes; making out contracts for the sale and purchase of coal, copying letters when required, settling accounts, and performing any other duties required at my hand.

X 37. State in detail all the duties so performed by you.

A. It is simply impossible to state them in detail.

X 38. Why is it impossible?

A. Because of their number and the difficulty of recollecting them.

X 39. State all that you recollect.

A. I don't recollect anything at this moment.

X 40. What do you mean by making out contracts for the purchase and sale of coal?

A. Filling up contracts ready for the signature of the officers of the company, and the person buying.

X 41. By filling up, do you mean filling up blank contracts?

A. I do.

X 42. Were you in the habit of filling up all the contracts for
44 the purchase and sale of coal during all the four years?

A. I was not.

X 43. Can you state what proportion of them you filled up?

A. Not with any degree of certainty.

X 44. During the same period was there another clerk in the office, whose duty it was to fill up contracts?

A. No clerk in particular. The secretary sometimes filled them up, and sometimes the treasurer himself. There might have been occasional instances of other clerks filling them up.

X 45. During the period that you were book-keeper for the complainants, as testified by you, was it any part of your duty to negotiate contracts for the purchase or sale of coal?

A. It was not.

X 46. How do you know, then, that during those four years that no coal of the company was sold, or called by any other name than Lackawanna?

A. All the coal sold was charged on the books of the company, and the bills made out at the office in New York, and the practice was to charge all the coal and render bills as for Lackawanna coal.

X 47. Where in the city of New York was your time passed
45 when in the employ of the company, during the four years that you *was* their book-keeper, as testified by you?

A. At their office, 31 Wall street.

X 48. From December, 1854, to March, 1866, I understand that you were secretary of the company. During that period what were your duties?

A. They were multifarious; comprised of the conducting of a portion of the correspondence, the general oversight of the books and accounts of the company at all its offices, the negotiation in some cases of the contracts for the sale of coal, the making out of contracts for such sales, and other duties, too numerous to mention.

Adjourned to the 5th November, at 11 a. m.

TUESDAY, *November 5th*, 1867.

Present, counsel for the respective parties.

Adjourned to the 6th inst., at 2 p. m.

WEDNESDAY, *November* 6, 1867.

Present, counsel for the respective parties.

Adjourned to the 12th inst. at 2 p. m.

46 TUESDAY, *November 12th*, 1867.

Present, counsel for the respective parties.

X 49. During the time of your employment as secretary of the complainants, did the company also employ a sales agent?

A. Not under that title at the office of the company. They had for a part of the time an agent located in Providence, Rhode Island, whose duty it was to attend to the sales of coal in the New England States.

X 50. During the same period did the company employ a general sales agent?

A. They did not.

X 51. What, if any, officer of the company had the general charge of its sales?

A. The president, and under his direction the treasurer, and a part of the time the vice-president.

X 52. During the time that you were employed as secretary of the company, did not your duties as such secretary, confine you principally to the New York office?

A. *It* did.

X 53. From the time of your first employment by the company up to the time you became sales agent, as you have testified, did you pass any of your time in Luzerne County, Pennsylvania; and, if yea, what portion?

47 A. I did, but a very small portion. I made several visits of two or three days' duration, each, to that county?

X 54. How many such visits did you make during that period?

A. Probably about a half dozen.

X 55. How soon after your employment commenced, was the first of such visits made?

A. I can't recollect; I should think about three years.

X 56. During the time of your employment as secretary, or bookkeeper of said complainant, state what acquaintance you had with dealers in coal, other than such as purchased from the complainants.

A. Very limited; I believe none of any consequence.

X 57. What acquaintance had you with dealers with the complainants, other than such as made their contracts personally at the home office in New York?

A. I had little or no personal acquaintance with such dealers.

X 58. How do you know, then, by what name such dealers were in the habit of purchasing their coal?

A. I take it for granted that each person purchased coal in his own name.

X 59. You have stated in your direct examination, in substance, that the coal of the complainants is known in the market as Lacka-
48 wanna coal, and that it is not known or dealt in by any other name; state what personal knowledge you have on that subject, in detail.

A. I know the company always sell their production under that name. This is all my knowledge on that subject.

X 60. How do you know the fact last testified to?

A. From the books of the company and from my knowledge of its practice during the last 17 years.

X 61. How many agencies for the sale of coal, aside from the city of New York, has the company had during that period?

A. I can't answer the question.

X 62. Why not?

A. Because I cannot recall the number and location of all of them.

X 63. State the number to the best of your recollection.

A. I can't state; I have no recollection on the subject.

X 64. What proportion of the coal of the complainants has been sold at its home office in the city of New York, during that period?

A. Probably three-fourths; possibly more.

X 65. What agents have the complainants had in the city of Providence, for the sale of their coal during that period, and up to the present time?

49 A. Mr. Alfred Wright was their agent for quite a number of years; Mr. Walter Lawton sold coal in Providence during one year, although he was located in Boston; Manchester, Hopkins & Co. sold as the agents of the company one year, I think, possibly two. That is all I recollect.

X 66. What year or years did Lawton sell for the complainants?

A. I don't recollect distinctly. I think it was about 1858.

X 67. What year or years did Manchester & Hopkins sell for the complainants?

A. I think it was about 1860, possibly 1859. I could tell by reference to the books, if I had known the question was to be asked.

X 68. Did they take the agency immediately after Lawton?

A. It is my impression they did not. I won't be certain.

X 69. Since 1860, have not Manchester & Hopkins received large supplies of coal from complainants?

A. They have.

X 70. Under what arrangement, if any?

A. The arrangement was that they were to pay for it at stated terms.

X 71. Did they deal exclusively in your coal?

A. I think not.

X 72. Has the company had any other or different arrange-
50 ment with them in reference to supplying them with coal, than such as it has had with other dealers in Providence, since the termination of the agency, as testified by you?

(Obj. to.)

A. Yes; this year and last the company have sold Manchester & Hoffman coal, and have declined to sell other dealers in Providence.

X 73. Are they not your representatives in that city?

A. I cannot say that they are.

X 74. Prior to the last two years, and since the termination of their agency, as testified by you, has there been any other arrangement with them than such as you made with other dealers?

(Obj. to.)

A. Yes.

X 75. What was that arrangement?

(Obj. to.)

A. They had a commission on certain sales made by them to other parties.

X 76. What were those certain sales?

(Obj. to.)

A. I cannot answer, by saying that they were sales of coal to manufacturers.

X 77. Do you know whence the name of Lackawanna is derived?

A. I do not.

51 X 78. Do you know, personally, whether it has ever been applied to coal, or used in connection with the word coal, by any person or company other than the complainants and the defendant in this action?

(Obj. to.)

A. I do.

X 79. How many persons or companies, to your knowledge, have so used or applied it?

A. I remember one person.

X 80. Is that all?

A. All I think of at present.

X 81. Who is the person to whom you refer?

A. Samuel Bonnell, jr., of New York, a coal dealer.

X 82. Do you not know that there is an extensive coal region in Luzerne County, Pennsylvania, called the Lackawanna coal region?

A. Not of my own knowledge.

X 83. Have you not heard before the commencement of this action, that there was such a coal region?

(Obj. to.)

A. I have heard mention made of such a region.

X 84. When did you first hear of a coal region by that name?

A. I don't recollect—long ago.

X 85. Do you not know that the coal mined in the Wyoming

52 Valley, west of Pittston, is called Wyoming coal, and that mined in the same valley, east of Pittston, is commonly called by the residents of the valley, Lackawanna coal?

A. I do not.

X 86. Did the complainants have a contract with the Pennsylvania Coal Company, in the years 1850 & 1851, for the sale of coal mined by the Pennsylvania Coal Company?

A. They did.

X 87. About what quantity of coal mined by the Pennsylvania Coal Company, was sold by the complainants under that contract?

A. According to my recollection, the whole quantity was something over 400,000 tons.

X 88. By what name was that coal sold?

A. By the same name as that mined by the complainants. The two were mixed together and sold as Lackawanna coal.

X 89. Since the year 1850, have the complainants sold any other coal mined in that valley as Lackawanna coal, than such as they have mined themselves?

A. They have.

X 90. From whom was such coal purchased or received by them?

A. I have before stated that they received the coal of the Pennsylvania Coal Company in 1851. Other than that they have disposed of no coal during the time mentioned, but that which was mined
53 by or for themselves.

X 91. From what particular parts of the Wyoming or Lackawanna Valley *have* the coal sold by the complainants been mined?

A. From Carbondale, Archbald or Olyphant, and Providence. All situated on or near the banks of the Lackawanna River.

X 92. Are the four places just named by you the only places from which coal sold by the complainants *have* been mined?

A. To the best of my knowledge, they are.

X 93. From which of those places was the coal sold by the complainant for the Pennsylvania Coal Company mined?

A. Neither.

X 94. Where was that coal mined?

A. I believe that coal was mined at Pittston and Dunmore.

X 95. Have the complainants ever purchased any coal from the Delaware, Lackawanna and Western Railroad Company?

A. They have.

X 96. When and to what extent?

A. At different times, and to the extent of 4,000 or 5,000 tons in all.

X 97. For what purpose was that coal purchased?

A. To supply the wants of customers who declined to go elsewhere to purchase coal, at a time when the complainants had none here?

X 98. When was that time?

54 A. I can tell by reference to the books, but not from memory.

X 99. State to the best of your recollection.

A. This has occurred several times within the last six years.

X 100. By what name was the coal, so purchased by the complainants, sold?

A. Scranton coal.

X 101. Then why have you testified that all the coal sold by the complainants has been sold by the name of Lackawanna coal?

A. Because the quantity thus sold as Scranton coal was so unimportant, I absolutely forgot it in answering your question?

X 102. Why have you testified that all the coal sold by the complainants was entered upon the books of complainants as Lackawanna coal?

A. Because I believe that to be the case.

X 103. Was this coal purchased of the Delaware, Lackawanna & Western Railroad Company, entered upon the books as Scranton coal or as Lackawanna coal?

A. I shall have to refer to the books for information.

X 104. Have you any recollection on that subject?

A. My recollection is not sufficiently distinct to enable me to answer with positive certainty

X 105. State your present recollection.

A. My present impression is that it was entered as Scranton coal.

55 X 106. Is that also your present recollection?

A. I have already stated that I have no distinct recollection on the subject.

X 107. (Question repeated.)

(Obj. to, as having been fully answered.)

A. I have already answered.

X 108. Have you any present recollection on that subject?

A. My present recollection is the same as the impression I have above stated.

X 109. By what channel is the coal mined by the complainants brought from the coal fields in Pennsylvania?

A. It is brought by railroad to Honesdale, thence by canal to Rondout, New York. This is the only channel.

X 110. Have you an agency for the sale of coal at Elizabethport, New Jersey?

A. We have not.

X 111. What is the difference between the coal which you have called the Pittston coal, and the coal you have called the Scranton coal?

A. I really cannot tell.

X 112. Is there any difference that you know of?

A. I have been informed that there is a difference, but what that difference is I do not know.

X 113. What is the difference between the Pittston coal and the coal mined by the complainants?

56 A. The Pittston is said to be harder. It is said to be prepared with less care, and consequently to contain more slate and other impurities. These are the differences as they exist at present, so far as I have heard.

X 114. State what have been the differences each year since 1850, if any.

A. Substantially, they have been about the same as above stated.

X 115. Have the differences between the two coals stated by you affected in any degree the value of the respective coals?

A. In my opinion they have.

X 116. Which of the two during that period has been the most valuable, in your opinion?

A. The coal mined by the complainants has generally sold for a higher price than that mined by the Pennsylvania Coal Company, by which I mean the Pittston coal.

Adjourned to the 21st inst., at 12½.

THURSDAY, *November 21st*, 1867.

Present, counsel for the respective parties.

Adjourned to the 26th inst., at 12 m.

57 TUESDAY, *November 26th*, 1867.

Present, counsel for the respective parties.

X 117. Which of these two kinds of coal, in your judgment, *have* been the most valuable during the period referred to in the last question?

A. Judging from the prices obtained for each, I should say the Lackawanna has been the most valuable.

X 118. Is that the only reason you have for considering the Lackawana the most valuable?

A. It is.

X 119. From what other person or persons, or corporation than the Delaware, Lackawanna and Western Railroad, and the Pennsylvania Coal Company, have the complainants received coal not mined by themselves?

A. They have bought, to the best of my recollection, from Quintard, Ward & Co., of New York City; the New Boston Coal Mining Company. These are all that I recollect.

X 120. Have you not purchased largely of Eaton & Co., of Archbald, Pennsylvania?

A. Eaton & Co. mine Lackawanna coal for the Delaware and Hudson Canal Co. to a considerable extent, but how largely I cannot say, without reference to the books.

58 X 121. Do not the complainants obtain coal from the Elk Hill Coal Company at Dickson, Pennsylvania?

A. I believe they do, in the same manner as from Eaton & Co.

X 122. Do not the complainants obtain coal from John Jermyn, at Rushdale, Pennsylvania?

A. They did in former years, but I am not sure that they do at present. I think the mine has changed hands.

X 123. Have not the complainants obtained large quantities of coal from the Boston and Lackawanna Coal Co., at Archbald, Pennsylvania?

A. They have, in the same manner as from Eaton & Co. How large quantities I cannot say without reference to the books.

X 124. For how long a period have the complainants obtained coal from the company last referred to?

A. The precise time I cannot recollect. I think it is about six or seven years. At all events, it includes the whole length of time the said company have leased the mine from which the coal is taken.

X 125. Is the coal mined by Eaton & Co., at Archbald, or by the Elk Hill Coal Company, at Dickson, or by John Jermyn, at Rushdale, or by the Boston and Lackawanna Coal Co., at Archbald, taken from mines belonging to the complainants?

59 A. I cannot answer, for I really do not know. I know that some of those lands formerly belonged to the company, but whether they do now or not, I do not know.

X 126. Each of those companies and firms are entirely separate from the complainants, are they not?

A. They are.

X 127. How or by what name have you sold the coal obtained from the firms and companies above referred to?

A. By the name of Lackawana coal—the same as all the rest of the company's mining.

X 128. Do you mean to include in that answer the coal received from Quintard, Ward & Co.?

A. I do not; nor that from the New Boston Coal Mining Company.

X 129. By what names did you sell the coal received from the company and firm last referred to?

A. That received from the New Boston Company was sold as New Boston Company coal, and that from Quintard, Ward & Co. as Pittston or Scranton, as the case may be.

X 130. Did you receive any considerable quantity from any of the sources above mentioned?

A. From the New Boston Coal Mining Co., and from Quintard, Ward & Co., together, I suppose we received perhaps 5,000 tons
60 in all. The quantity received from the other parties above mentioned I am unable to give, or even estimate with any degree of accuracy.

X 131. During the last sitting you stated in answer to a question with reference to the name by which you sold the coal obtained from the Delaware, Lackawanna and Western Railroad Company that you were unable to answer without reference to the books of the complainants; have you referred to the books, and are you now able to answer?

A. I did not intend to make any such statement at our last sitting.

I intended to state that the coal was sold as Scranton coal; but in answer to the question how it was charged on our books, I promised to make an examination.

X 132. Have you refreshed your recollection since the last meeting with reference to the number of tons of coal purchased by the complainants from the Delaware, Lackawanna and Western Railroad Company?

A. I have not.

X 133. Since the last part of the year 1859, have not the complainants purchased of that company over 30,000 tons of coal, instead of about 4 or 5,000 as you have previously testified?

61 A. I really cannot say.

X 134. Have you any recollection on that subject?

A. None, whatever, beyond what I stated in my last examination.

X 135. What means have you of knowing that the coal purchased of the Delaware, Lackawanna & Western Railroad Company, has been uniformly sold as Scranton coal by the complainants?

A. I know that I always gave positive instructions to have it sold by that name, and by no other.

X 136. Is that the only reason you have for stating that it was actually so sold?

A. It is not. I have sometimes mentioned the fact myself in selling to customers. I have had occasion, also, to apologize in writing to customers for being under the necessity of delivering to them Scranton coal, when they wanted Lackawanna.

X 137. Have you now stated all the reasons?

A. All that I think of at present.

X 138. When did you first learn that any coal, not sold or mined by your company, was being sold by the name of Lackawanna coal?

A. My recollection is not exactly clear, but think it was about the time of the commencement of the correspondence with the defendant—put in evidence—about May, 1866.

62 X 139. Do you know that the complainants first heard of it at that time, or had they heard of it before that time?

A. Speaking for myself, as an agent of the company, I can only give the foregoing answer. What the other officers may have heard I am unable to say.

X 140. Do you not know that the company had information of such sales some time prior to May, 1866?

A. Speaking with reference to the defendant, I do not; but there may, possibly, have been cases where other parties had sold other coal by the name of Lackawanna prior to that time, but, if there were such, I cannot now recall the particulars.

X 141. Do you not know that some time prior to May, 1866, the company had knowledge that a number of persons, other than the defendant, were selling coal as Lackawanna coal, which had not been mined or sold by the complainants?

A. I do not.

X 142. Was not a considerable portion of the coal purchased by your company from the Delaware, Lackawanna and Western Railroad Company, family coal, and retailed in small quantities from your various yards?

A. I think not. My impression that the great bulk of it was large coal, used in generating steam, bought to supply the needs of our
63 customers of that class at times when we had none of our own accessible.

X 143. What is the technical name of coal referred to by you in your last answer?

A. The varieties referred to by me are three, called by the Delaware, Lackawanna and Western Railroad Company, lump, steamer, and grate or broken coal.

X 144. Is not the coal designated by you grate or broken, a variety of coal used by families largely?

A. Not very largely. The only use to which it is put in families, is for burning in furnace heaters.

X. 145. What is the principal use of coal known as egg or stove coal?

A. They are two distinct varieties, used for domestic purposes in grates, stoves, & ranges.

X 146. Was not all or a part of the family coal purchased by your company from the Delaware, Lackawanna & Western Railroad Company retailed from your various yards?

A. I have no doubt it was all retailed from our yards.

X 147. Was it so retailed as Scranton coal?

A. I have no doubt it was. I do not know the fact, because I had no personal agency in retailing the coal, further than by general directions given to the yard superintendent.

X 148. Do you know whether or not it was kept separate from the family coal mined by your company, in their yards?

64 A. It must have been, because, as I have before stated, we never bought those coals, except to supply the wants of our customers at times when we had none of our own.

X 149. Do you mean to be understood as saying that your company only bought coal of the Delaware, Lackawana and Western Railroad Company when you were entirely without coal of your own?

A. Yes; I do.

X 150. Was the coal so bought of them entirely disposed of before you received coal of your own?

A. I have no doubt it was, to all intents and purposes.

X 151. Through whom did you first learn that defendant was selling as Lackawanna, coal not sold by your company?

A. Positive information first came to me from the defendant himself. I had been previously notified of it by Manchester, Hopkins, & Co., of Providence, and through the newspapers of that city.

X 152. Do you not know that in the trade there are three general and leading varieties of anthracite coal, known, respectively, as Lehigh coal, Schuylkill coal, and Lackawanna or Wyoming coal, and that those several names are used in the trade to designate generally coal coming

65 from the three great anthracite regions, and known as the Lehigh, Schuylkill, and Lackawanna coal regions, without regard to the producer?

A. I do not know the case to be as you have stated it.

X 153. Can you state the exact amount of coal, after referring to your books, received from the D. L. & W. R'road Company by the complainants since the commencement of 1860?

A. I can.

X 154. Will you please refer to your books and be prepared to state the quantity and the names of the persons to whom you sold the same, and by what names the same were sold?

A. I will furnish the quantity, but I do not feel disposed to furnish the names of our customers, nor the precise nature of our dealings with them?

X 155. Why not?
A. Because I do not think it necessary.
X 156. Is that the only reason?
A. It is.
Adjourned to 12½, the 3d December.

TUESDAY, *December 3d*, 1867.

Present, counsel for the respective parties.
Adjourned to the 17th inst., at 12 m.

66 TUESDAY, *December 17th* 1867.

Present, counsel for the respective parties.
Adjourned to the 9th January, at 1 p. m.

THURSDAY, *January 9th*, 1868.

Present, counsel for the respective parties.
Adjourned to the 28th January, at 1 p. m.

TUESDAY, *January 28th*, 1868.

Present, counsel for the respective parties.
Adjourned to Feb'y 4th, at 1 p. m.

67 TUESDAY, *February 4th*, 1868.

Present, counsel for the respective parties.

Witness' cross-examination continued:

X 157. Do you know whether the defendant has on any occasion sold coal as Lackawanna coal of the plaintiffs, which was not, in fact, Lackawanna coal of the plaintiffs?
A. I only know it from his own admission.
X 158. When was such admission made, and in what manner?
A. I do not recollect the precise date. It was in a letter from him to me heretofore offered in evidence; I cannot give the exact date. It was one of the letters of August, 1866, in which he avows having sold Pittston and Scranton coal for Lackawanna.
(So much of the answer objected to as purports to give contents of the letter.)
X 159. Can you refer to the letter by date?
A. I think it was the letter of the 31st of August.
X 160. Have the plaintiffs bought any coal of or through
68 Manchester, Hopkins & Co.?
(Obj. to.)
A. I cannot at this time recollect of their having done so.
X 161. Are you now prepared to state the amount of coal purchased from the Del., Lackawanna and West R. R. Co., and the time when the same was purchased, when, to whom, and for what amount the same was sold?
A. I am prepared to give you the quantity purchased since 1860, and *and* a statement of that proportion which was placed in our yards.
X 162. When can you be prepared to give a statement of the facts referred to in the last preceding question?
A. I do not propose to furnish the names of customers at all. I can give you the other particulars now, as I understand them.
X 163. Are you able to give the names of persons to whom you sold the coal?

A. I might procure the names from the books of the company.

X 164. Have you any recollection *indefendant* of the books of the company on that subject?

A. To but a partial extent.

69 X 165. Name the persons to whom you sold, to the best of your recollection.

(Obj. to.)

A. I decline to do so, for the reason that I have been forbidden to do so by the president of the company.

Adjourned to the 18th, at 1 p. m.

TUESDAY, *February* 18, 1868.

Present, counsel, as before

Adjourned to the 26th inst., at 1 p. m.

WEDNESDAY, *February* 26, 1868.

Present, counsel for the respective parties.

Adjourned to 10th March, at 12 m.

TUESDAY, *March 10th*, 1868.

Present, counsel for the respective parties.

Adjourned to the 18th, at 2 p. m.

70 WEDNESDAY, *March 18th*, 1868.

Present, counsel for the respective parties.

Witness HARTT'S cross-examination continued:

X 166. Are your now prepared to state the amount of coal purchased by the complainants from the Delaware, Lackawanna and Western Railroad Company, and the time when the same was purchased?

A. I am.

X 167. State, if you please.

(Obj. to.)

A. There were purchased in the year 1860, 10,929$\frac{15}{20}$ tons. In the winter of 1862 and 1863, 28,401 tons.

X 168. When was the same sold, and to *who*?

A. It was sold at about the time it was purchased. That purchased in 1860 was put into the yards of the complainants, and sold therefrom; I am unable to say to whom it was sold. Of the coal produced in 1862 & 1863, 11,744 tons were placed in the company's yards, and

71 16,657 tons were sold to different individuals by the cargo. Those who purchased by cargo were the Stonington line of steamboats, the People's line of steamboats, owners of the steamship Columbia and Marion, (I think the agents were Spofford, Tileston & Co.;) John G. Dale, agent; the Erie Railway Company, the New York Steam Sugar Refining Company, Tyler, Stern & Co., Robert P. Parriot, E. G. Bacon, H. P. Cromwell & Co., George Moore, Jacob Happock, Buckland & Crane, Farbury & Chauncey, A. S. Low & Bro., the Judd Linseed and Sperm Oil Company, Hecker & Bros., Olyphant, Son & Co., Williamson, Griffith & Co., the Troy line of steamers, Breck, Cushman & Stanton, H. Keetmezyer, Claudius Van Duzen, Eagleton & Co., the Millville Manufacturing Company, and John M. Furman. Of the coal delivered from yards to purchasers, we keep no record in our office sufficient to enable me to name the purchasers.

X 169. Have the complainants purchased any coal from the Bonstarch mine?

A. Not to my knowledge. They own that mine, and mine coal from it.

72 X 170. Where is it situated?

A. At the village of Hyde Park, between two and three miles from Scranton.

X 171. Have the complainants received any coal from Leggett's coal mine?

A. They own that mine also, and take coal from it. It is possible they mine the coal under a lease, paying a royalty for it.

X 172. Have the company ever received any coal from that mine, not mined by themselves?

A. Not to my knowledge.

X 173. Have the complainants ever received any coal from the Baltimore mine, at or near Wilkesbarre?

A. Never, to my knowledge, until within the last 30 days.

X 174. Do they own or lease that mine?

A. They have control of the mine at present.

X 175. In what manner?

A. I don't understand the exact arrangement with reference to it, but the complainants, I believe, originally purchased the land,

73 resold it to another company which intended to work the mine, but, becoming embarrassed, I believe the property has reverted to the complainants in some way.

Direct resumed by Mr. Owen:

Q. 176. About what time did the Pennsylvania Coal Company begin to produce coal from their mines?

A. About the beginning the year 1850.

Q. 177. How, and by whom, was this coal for the first two years brought to market and sold?

A. It was brought to market and sold by the complainants, being mixed with the coal of complainants at Roundout.

Q. 178. Was it not cleaned and prepared by the complainants before it was sold?

A. Nothing further than the usual screening at the point of shipment. It was prepared at the mines by the Penn. Coal Company.

Q. 179. By what name was that coal sold when thus mixed?

A. It was sold as Lackawanna coal.

Q. 180. State whether or not the Pennsylvania Coal Co. knew

74 that their coal was mixed with the coal of the complainants, and is sold by the name of Lackawanna coal.

(Obj. to.)

A. They did. It was sold by the complainants in pursuance of *an* written agreement between the two companys.

Q. 181. When did the complainants cease to sell the coal of the Pennsylvania Coal Company?

A. In the early part of the year 1852.

Q. 182. You stated, on your cross-examination, in answer to a question that a Mr. Bromwell, of this city, had sold coal of other producers by the name of Lackawanna coal; state whether or not he was forbidden so to sell, and what was the result.

A. I addressed him a letter, calling his attention to the matter, and requested him to stop the practice. He replied in person, and promised, verbally, that he would stop; since then I have heard no complaints respecting him.

(Obj'n to the contents of the letter.)

Q. 183. *Was* there any, and if so, what instructions given by
75 you or by the officers of the complainants in respect of the name by which the coal purchasedof Del., L. and W. R. R. Co. should be sold?

A. In relation to cargoes my instructions always have been that those attending to the delivery of the coal should notify purchasers that the coal was not of our own mining; the same instruction was given to the yard superintendants in relation to coal placed in yards and delivered therefrom; the instructions of the president and treasurer have been to the same purport.

Q. 184. You were asked, on cross-examination, in reference to the business of Eaton & Co., the Elk Hill Coal Company, the John Germyn, at Rushdale; and the Boston Lackawanna Coal Company, at Archbald; are those companys engaged in producing coal for market, or mining simply for others, and for whom?

A. I believe they mine exclusively for the Delaware and Hudson Canal Company, and under the *the* supervision of the complainants' mining superintendent.

Cross resumed by Mr. Knox:

X 185. How long have the companys and persons last referred
76 to mined exclusively for the complainants?

A. Ever since the' commenced mining.

X 186. What do you mean by the expression "the usual screening as coal was shipped?"

A. Coal when transferred from cars to boats, or from boats to vessels, is run over a screen to take out the fine coal dust.

J. C. HARTT.

Subscribed and sworn to before me this 28th March, 1868.

R. E. STILWELL,
Examiner, &c.

Adjourned to the 27th inst., at 3 p. m.

FRIDAY, *March 27th*, 1868.

Present, counsel for the respective parties.
Adjourned to April 1st, at 3 p. m.

WEDNESDAY, *April 1st*, 1868.

Present, counsel for the respective parties.
Adjourned to April 13th, 3 p. m.

77 MONDAY, *April 13th*, 1868.

Present, counsel for the respective parties.

JOHN ENDICOTT, called and sworn as a witness on the part of the complainants, deposes and says:

Q. 1. What is your business, and how long have you been employed in such business?

A. I am an agent or superintendant of a coal-yard belonging to complainants in this action, situated at pier 38, North River, and have been such since 1840; the yard has not all the time been at that point, but have been in the same capacity in their service.

Q. 2. How is the coal sold in that yard, by large or small quantities?
A. By wholesale and retail.
Q. 3. By what name is the complainants' coal sold from your yard?
A. By the name of Lackawanna; it is never sold by any other name.
Q. 4. By what name do customers apply for, and purchase such coal?
A. When they use the name at all it is Lackawanna.
78 Q. 5. How long has the complainants' coal been called and known by the name of Lackawanna coal?
A. Ever since I began to deal with it; long before I went into the service of complainants it was known by that name.
Q. 6. State whether or not the name "Lackawanna coal" is understood by dealers and consumers as being coal produced by the complainants?
(Obj. to, but not as leading.)
A. It is. When the' ask for Lackawanna coal they mean coal produced by the Delaware and Hudson Canal Company.
Q. 7. What quantities of coal *is* sold from your yard yearly?
A. From 45 to 60,000 tons.
Q. 8. Do you ever have for sale, in your yard, coal produced by other companies than the complainants, and bearing a different name from that of complainants; and if so, state how and by what name such coal is sold?
A. We have had, but not *frequent*; only when we have been short of our own coal. We sell that very much as we do the other, by
79 wholesale and retail; we always sell it for just what it is, and sell it by the name *at* which it is known by in the market—as Scranton coal—which is the kind I have referred to, and it never has been, to my knowledge, sold as Lackawanna coal.
Adjourned to the 18th inst., at 12 m.

SATURDAY, *April* 18*th*, 1868.

Present, counsel for the respective parties.
Adjourned to May 15th at 12 m.

FRIDAY, *May* 15*th*, 1868.

Present, counsel for the respective parties.

Cross-examined by Mr. Knox counsel for defendant.

X 9. Did you ever sell from your yard coal not produced by the complainants?
A. We have.
80 X 10. About how much?
A. About 40,000 tons.
X 11. When?
A. Between the years 1860 & 1863, I think.
X 12. How much coal not produced by the complainants did you ever have at any one time in your yard?
A. I can't say, I should think sometimes as much as 400 or 500 tons.
X 13. Did you at the same time have in your yard any coal produced by the complainants?
A. We had sometimes, and sometimes we had not.
X 14. By whom was the coal so had produced, when not produced by the complainants?
A. I think by the Delaware, Lackawanna and Western Railroad Company.
X 15. To whom did you sell such coal?

A. We sold it to our yard customers—sundry people, steamboat men, manufacturers, and miscellaneous purchasers from the yard. I remember the sugar refiners, Green, Inness & Co, Moller, Odell & Co.; I think William Moller too, although not certain.

81 X. 16. Are you acquainted with the coal regions of Pennsylvania?

A. I am not.

X 17. Do you recollect of having sold any other coal at your yard, than that produced by your company, and the D., L. and W. R. R. Co.?

A. I do.

X 18. By whom or by what companies produced?

A. I don't know.

X 19. By what name did you sell the coal last referred to?

A. Locust Mountain; that is the only kind I recollect.

X 20. Have you sold at your yard any coal produced by, or procured from the Pennsylvania Coal Company?

A. I don't recollect of our having that coal since that company organized and commenced selling their own coal?

X 21. Have you not sold coal produced by that company since its organization?

A. Before they commenced selling their own coal, we sold it for them. I don't know what the relations were between the companies; all

82 I know is that this coal came into our possession, and was sold in the same way, and by the name of Lackawanna.

X 22. Does the coal produced by the complainants find its way to the market by any other channel than by the canal belonging to the complainants?

A. Not that I know of.

X 23. Did you invariably sell the coal sold by you which you have testified was produced by the D., L. & W. R. R. Co. as Scranton coal, or did you not sometimes sell it as Lackawanna coal?

A. We sold it as Scranton; we never sold it as Lackawanna coal; in the miscellaneous custom in selling tons or half tons, we did not always make the declaration that it was Scranton coal.

X 24. Do you recollect any instance in which you sold a quantity not exceeding a ton of such coal when you stated to the purchasers that it was either Scranton coal, or any other variety than Lackawanna?

A. Our invariable custom was (obj. to) in making sales to our

83 contractors and large customers, and also to a class of retail customers to say that it was Scranton coal, but to every purchaser of a ton, or a half ton we did not state that it was either Scranton or Lackawanna coal.

X 25. Question repeated.

A. I did in many instances, but what particular one I can't recollect. Frequently they would note a difference, and come back and ask if it was the same coal, or what coal it was.

(The last clause obj. to as not responsive.)

X. 26. Are the customers to whom you are in the habit of selling quantities of a ton, or less, a large class or not?

A. Yes, we have a large floating custom; a large regular custom, too, of that kind?

X 27. Have you signs about your yard indicating the kinds of coal you deal in?

A. We have.

X 28. What are those signs?

A. Lackawanna.

X 29. Do any of them indicate that you have any other varieties of coal than Lackawanna?

84 A. They do not.

X 30. Are the complainants in the habit of advertising any other kinds of coal than Lackawanna for sale?

A. Not that I know of.

X 31. Have you been in the habit of having printed bill-heads upon which you make out the bills of your customers?

A. We have.

X 32. Have those printed bill-heads indicated the variety of coal sold by your company?

A. They have.

X 33. What do they indicate on that subject?

A. Lackawanna.

X 34. Can you repeat from recollection the contents of the bill-heads?

A. Bought of the Delaware & Hudson Canal Company ton of the size, Lackawanna coal.

X 35. Were you in the habit of making out, or seeing bills made out, after they were made out to your customers?

A. I was.

X 36. Was the form that you have just given, changed when you sold coal not produced by the complainants?

85 A. It was not.

X 37. You have stated in your direct examination that the name Lackawanna coal is understood by dealers and consumers as being coal produced by the complainants; state in detail the knowledge you have on that subject.

A. In my intercourse with the coal trade, often hearing them speak of the coal in contradistinction from the complainants', and from their coming to me when we have been out of ches'nut size, telling me they had Scranton, and asking me to send orders which I could not supply to them for Scranton.

X 38. Do you know of a variety of coal known as Lehigh coal?

A. I do.

X 39. Anthracite?

A. I do.

X 40. What is the difference between Lehigh coal and Lackawanna coal?

A. Lehigh is a harder coal than Lackawanna; I am not aware of any other difference; it is a heavier coal.

X 41. By what company or companies is it produced?

A. I don't know.

86 X 42. Is not the coal coming from the Lehigh coal regions known generally as Lehigh, without regard to the producer?

A. I don't know; I can't say.

Direct resumed:

Q. 43. Can you state about what proportion of the Scranton coal which comes to your yard was sold, or delivered under contracts to steamboats and manufactu'ers? If so, please state the same.

A. I should think at least three quarters of it.

Q. 44. State whether or not in all those cases the parties were informed before or at the time of receiving it that it was not Lackawanna coal, or that it was Scranton?

(Obj. to as leading, and for other reasons.)

A. I can't say that in all cases they were before, or at the time, but I

can say that they were always informed of it so that they knew what they were purchasing or receiving.

Q. 45. State whether or not the purchasers of the remainder of
87 that coal were informed or knew that such coal was not the Lackawanna coal?

(Obj. to as leading, and for other reasons.)

A. In many cases they were informed.

Q. 46. Did you, or any person connected with your yard, to your knowledge ever sel such coal representing it to the purchaser as Lackawanna coal?

A. Never.

Cross resumed:

X 47. How do you know that in all cases in which you sold or delivered coal under contract produced by the D., L. & W. R. R. Co., purchasers were informed that it was not Lackawanna, but that it was Scranton?

A. Because I gave information myself. I was very particular about that.

JNO. ENDICOTT.

Adjourned to the 26th inst., at 1 p. m.

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89 TUESDAY, *May 26th*, 1868.

Present, counsel for the respective parties.

ROBERT YELLOWLEE, called and sworn as a witness on the part of complainants, deposes and says:

Q. 1. What is your business?

A. Coal agent for the Delaware and Hudson Canal Company.

Q. 2. How long have you been such and what are your duties?

A. I have been 27 years with the company, selling coal.

Q. 3. Where do you do business?

A. Foot of Harrison street, South Brooklyn, where it has been for 12 years.

Q. 4. Where was your yard before that?

A. In Furman st., Brooklyn.

Q. 5. Have the complainants any other yard in Brooklyn, than the one you superintended?

A. No; but I have a seperate office at 33 Atlantic street.

Q. 6. How much of the time do you spend at the yard?

A. I am there on an average from four to five hours per day.

Q. 7. About what quantity of coal is sold by you, or under your direction, annually?

90 A. About 45,000 tons.

Q. 8. Whose coal do you sell?

A. The complainants'.

Q. 9. By what name do you sell that coal?

(Obj. to.)

A. Lackawanna coal.

Q. 10. State whether or not that kind of coal which you deal in is known or called by any other name in market.

A. I never heard of any other name attached to it.

Q. 11. By what name do purchasers ask for the coal you sell?

A. I don't know exactly how to answer that question. Some customers, or persons we may call customers, come in and ask for Lehigh coal, and I tell them we keep nothing but Lackawanna. Those who ask for our coal ask for Lackawanna.

Q. 12. During the period that you have been coal agent in South Brooklyn, have you had any other coal in your yard for sale than that produced by the complainants, and which you call Lackawanna coal?

A. We have.

91 Q. 13. State how you came to have such coal, and in what years you had it, and about what quantity.

A. We were getting out of Lackawanna, and our company bought some Scranton, from the Scranton company. I am not sure whether it was 1861 or 1862. I can't say the quantity I had; about five cargoes.

Q. 14. State where that was placed in the yard; whether by itself, or with the Lackawanna coal.

A. I placed it by itself.

Q. 15. By what name or description was that coal sold?

A. By the name of Scranton coal.

Q. 16. Did you or any person connected with your yard, to your knowledge, sell such coal as and for, or representing it to be, Lackawanna coal?

A. Never to my knowledge.

Cross-examined by Mr. Knox, counsel for defendants:

X 17. What kind of coal is referred to under the name of Lehigh coal?

A. It is one of the Schuylkill white ash coal—anthracite coal.

92 X 18. From what does it derive the name Lehigh?

(Obj. to.)

A. I could not say.

X 19. What do you mean by Schuylkill coal?

(Obj. to.)

A. I mean all the mines worked in the Schuylkill region.

X 20. Do you know of any other coal region than the Schuylkill region? If so, state all such coal regions that you know of.

A. I know of the Lackawanna coal region at Carbondale; I know there is a Scranton coal region, and a Pittston, although I have never been there. I have been to the Lackawanna coal regions, but to no other coal regions in the county.

X 21. Is not all the coal taken from the Lackawanna coal regions known as Lackawanna coal in the trade?

A. It is, to the best of my knowledge. I have never heard of anything else.

X 22. Do you know of a coal region known as the Lehigh coal region?

93 A. I have always heard of it.

X 23. Is not the coal taken from that region usually known as Lehigh coal?

A. To the best of my knowledge, it is.

X 24. Do you know, of your own knowledge, what are the boundaries of the Sch'ylkill coal region, the Lehigh coal region, and the Lackawanna coal region, or either of them?

A. I know nothing about the boundaries of either of them.

X 25. Is it the habit of all customers buying coal at your office to

enquire specifically for Lackawanna coal, or do they not frequently call for and order coal generally, without using the name Lackawanna?

A. Perhaps one-half of the customers don't name the coal at all. They come in and put their hand upon the size of coal wanted, and order that.

X 26. Do you use printed bill-heads in your office, on which you enter coal sold to customers?

A. Always.

X 27. Have you any such bill-heads with you?

A. I have not. We have them printed by the ream.

94 X 28. Has the form of your printed bill-heads been changed within the last ten years?

A. The substance has been the same, though we have changed the style; that is, in leaving large spaces. This same form of bill-heads has been used at all the yards of the complainants, except that they stated the different yards.

X 29. Has the name of the coal sold by the complainants been invariable printed upon the bill-heads during the last ten years?

A. It has. It is Lackawanna coal.

X 30. Have you at any time changed or caused that name to be changed upon any bill of coal sold by you or from the yard which you superintended?

A. I have.

X 31. Upon how many occasions?

A. I could not say.

Direct resumed by Mr. Owen:

Q. 32. What coal was sold on the occasions when you say the bill-head was changed?

A. Scranton coal.

95 Q. 33. How many kinds of anthracite coal are there in the market? And state as many as you remember.

A. Lackawanna, Pittston, Scranton, and Lehigh, and all the white ash and red ash Schuylkill.

Q. 34. What companies produce those various kinds of coal?

A. The complainants produce the Lackawanna; the Pennsylvania Coal Co., the Pittston; the Delaware, Lackawanna and Western Railroad Company, the Scranton; the Lehigh Coal , I suppose, produces the Lehigh; but whether that is the right style of the company, I don't know, as I never had anything to do with it. I don't know who the producers of the others are.

Q. 35. Is the coal produced by the Pennsylvania Coal Company known or dealt in by dealers and consumers, in market, by any other name than Pittston? And if so, state what other.

A. I never heard of any other.

Q. 36. Is the coal produced by the D., L. & W. R. R. Co. known or dealt in by dealers and consumers, in market, by any other name

96 than Scranton? And if so, state what other.

A. I have never heard of any other name than Scranton coal for that company's coal.

Q. 37. Do not those names indicate by whom the coal of those respective names—Scranton, Pittston, Lackawanna—are produced?

(Obj. to.)

A. I think they do.

Q. 38. Have you ever known of any case where the Scranton coal or

the Pittston coal has been sold by or under the name of Lackawanna coal?

A. No, sir.

Cross resumed by Mr. Knox:

X 39. Do you know under what name coal sold by other persons than yourself has been sold and is sold?

A. No, sir; I know nothing about the sale of coal, except from our own yard.

ROBERT YELLOWLEE.

Subscribed and sworn to before me this 26th May, 1868.

R. E. STILWELL,
Examiner, &c.

97 Adjourned to the 3d June, at 1 p. m.

WEDNESDAY, *June* 3, 1868.

Present, counsel for the respective parties.
Adjourned to June 9, at 1 p. m.

TUESDAY, *June* 9, 1868.

Present, counsel for the respective parties.
Adjourned to October 13, at 12 m.

TUESDAY, *October* 13, 1868.

Present, counsel for the respective parties.
Adjourned to November 12, at 1. p. m.

THURSDAY, *November* 12, 1868.

Present, counsel for respective parties.
98 Adjourned to Nov. 19, at 12 m.

THURSDAY, *November* 19, 1868.

Present, counsel for the respective parties.
Adjourned to November 27, at 12.

FRIDAY, *November* 27, 1868.

Present, counsel for the respective parties.
Adjourned to Dec'r 7th, at 12.

WEDNESDAY, *December* 7, 1868.

Present, counsel for the respective parties.
Adjourned to the 8th January, 1869, at 12 m.

99 FRIDAY, *January 8th*, 1869.

Present, E. H. Owen, esq., counsel for complainants; E. B. Rudd, esq., counsel for defendant.

ISAAC N. SEYMOUR, called and sworn as a witness on the part of complainants, deposes and says:

Q. 1. Where do you reside?

A. No. 264 West 23d street, New York City.

Q. 2. Are you connected in an official capacity with the Delaware and Hudson Canal Company, the complainants, and if so, what?

A. I am treasurer of the company.

Q. 3. How long have you been such treasurer?

A. I can't tell exactly, but it is something like 25 years.

Q. 4. Were you connected with the company previous to that, and if so, for how long a time, and in what capacity?

A. I was appointed one of the book-keepers in 1825, and I went there in June of that year.

Q. 5. Had the company begun to produce and bring to market coals, at that time?

100 A. No, sir; not at that time. The first coal they brought was in 1829.

Q. 6. By what name is the company's coal sold in market?

(Obj. to.)

A. By the name of Lackawanna coal.

Q. 7. By what name is the company's coal sold in the market by the company?

A. Lackawanna coal.

Q. 8. How long has it been sold by the company by that name?

A. Ever since 1829, when it was first brought to market.

Q. 9. When was that name first applied to the coal?

A. I believe it was in 1829.

Q. 10. Had it been adopted by any other company, or person prior to that time?

A. Not to my knowledge.

Q. 11. What other companies were engaged in producing and bringing to market coal at the time Lackawanna was adopted?

A. The Lehigh and the Schuykill companies.

Q. 12. By what name was their coal known and called?

A. Lehigh and Schuylkill.

101 Cross-examined by Mr. Rudd:

X 13. In what capacity did you first enter the service of the Delaware and Hudson Canal Company?

A. As book-keeper.

X 14. How long did you remain in that employment?

A. Five or six years—perhaps more—I have no distinct recollection.

X 15. In what capacity did you then act in the service of that company?

A. I was first appointed secretary—acting book-keeper at the time.

X 16. How long did you continue to act as secretary of the company?

A. I can't say how many years exactly—some 5 or 7 years.

X 17. In what capacity were you next engaged by the company?

A. I was then appointed assistant treasurer.

X 18. How long did you continue to fill that position?

A. I continued in that till 1842, I think.

X 19. In what capacity were you next engaged by the company?

A. I was appointed treasurer, and have continued so ever since.

102 X 20. What were your duties during the time you occupied the posisition of book-keeper?

A. I was keeping merchants' accounts, people who *done* business with us as a bank.

X 21. Did you keep any of the books containing purchases or sales of coals?

A. Yes, sir. The principal business of the coal business, or as kept by the other book-keeper.

X 22. Did your duties confine you to the office of the company, or were you concerned in any of its outside business?

A. My duties were confined in the office of the company as book-keeper.

X 23. During the time you acted as secretary of the company, what were your duties?

A. I kept the minutes of the company, and in other respects pretty much as before.

24. What were the duties of assistant treasurer?

A. I acted for the treasurer when he was absent, and as we were a banking company, I signed the bank notes, and the treasurer signed them also.

103 X 25. In what respects, if any, did your duties differ from these, on assuming the office of treasurer?

A. They were pretty much the same. I acted as treasurer instead of assistant treasurer.

X 26. During the entire period of your connection with the company, state whether or not it has ever formed any part of your duties to negotiate contracts for the purchase or sale of coal on behalf of the company?

A. After I became assistant treasurer, I made contracts for the sale of coal with our customers.

X 27. Do you mean to say that it was your regular business to make such contracts, or that you made them in exceptional instances.

A. I made them, generally, for several years.

X 28. During which of the years that you were in the service of the company, were you in the habit of making such contracts?

A. I believe I made contracts from 1835 to 1855.

X 29. How do you know that the first coal sold by the company, in 1829, was sold under the name of Lackawanna coal?

104 A. Because we had no other coal to sell but Lackawanna, and I never knew it sold by any other name.

X 30. Was the coal of the company in the market at that time known by any name whatever?

A. It was known by the name of Lackawanna coal; I never knew it by any other.

X 31. In the year 1829 was the coal of the company known among dealers by any name whatever?

A. We sold so little that year, I cannot say; but what we did sell was sold as Lackawanna coal.

X 32. In what manner, if any, did the company indicate to dealers in coal at that time that there coal was to be known as Lackawanna?

A. At that time we sold very little coal to dealers, but when we did sell it, we sold it as Lackawanna coal, and I never knew it by any other name since we have had it to sell.

X 33. In what manner did you indicate to purchasers that your coal was intended to be known by that name?

105 A. I don't know that there was any particular manner about it; it was represented to them that it was Lackawanna coal. When we had printed circulars to fill up for contracts they were called Lackawanna coal.

X 34. Was the name Lackawanna printed in the same manner in your bills of lading when you shipped the coal?

A. I don't remember whether it was in the bills of lading or not. I suppose it was. We had very little to do with bills of lading in our office; that was done at Roundout.

X 35. You have stated that the coal of the Lehigh and Schuykill companies was known in the market as Lehigh and Schuylkill coal. Why was it so called?

A. So as to distinguish each compan*ie*'s coal, I suppose.

X. 36. Were not those coals so designated because they came from the Lehigh and Schuylkill coal regions?

(Obj. to.)

A. Well, I can't tell you why. The Lehigh Company called their coal Lehigh, and the Schuylkill called theirs Schuylkill, and they
106 were known in the market as such.

X 37. Do you not know that the Lehigh coal is mined in a district known as the Lehigh coal region?

(Obj. to.)

A. I never was there myself, but I presume the Lehigh Company got their coal out of that region.

X 38. Is not the name which the coal bears in the market taken from the name of the district from which it is brought?

(Obj. to.)

A. Well, I presume so.

X 39. Is not the same fact true in regard to the Schuylkill coal?

(Obj. to.)

A. The reason that name is given Schuylkill is, I suppose, because they give it that name, and the same, I suppose, with the Lehigh.

X 40. Is there more than one company that mines its coal from the district known among the coal trade as the Lehigh district?

(Obj. to.)

A. I can't tell you; but think that *difererent* companies get out the Lehigh coal from the same region.

107 X 41. Is not that coal sold in the New York market as Lehigh coal?

(Obj. to.)

A. Lehigh coal is sold as Lehigh coal.

X 42. Is not coal sold from the Schuylkill region sold under the name of Schu'lkill coal?

A. I presume it came from that region. There are different kinds of Schuylkill coal—the white ash and red ash.

X 43. Do you know of any coal coming from the Schuylkill region which is sold in this market under any other name than that of Schuylkill coal?

(Obj. to.)

A. There is Schuylkill coal brought to market here, and sold by other names than the name of Schuylkill; there is red ash and white ash, but it is all known as coming from Schuylkill region, and the same as to Lehigh coal; there are several qualities of that.

X 44. Is there any coal from the Lehigh region sold in this market under any other name than that of Lehigh coal?

A. There is.

X 45. What coals are so sold?

108 A. Buck Mountain, I think, is a Lehigh coal.

Adjourned to the 15th inst., at 12 m.

FRIDAY, *Jan'y* 15, 1869.

Present, counsel for the respective parties.

Adjourned to the 19th inst., at 2 p. m.

TUESDAY, *January* 19, 1869.

Present, counsel on both sides.

Adjourned to the 20th inst., at ½ p. m.

109 WEDNESDAY, *Jan'y* 20, 1869.

Present, counsel on both sides; the counsel for defendant appearing, and reserving the right of objection to any question on the direct examination of this witness.

EDWARD H. QUINTARD, called and sworn as a witness on the part of the complainants, deposes and says:

Q. 1. What is your name, residence, business, place of business, and the name of your firm?

A. Edward A. Quintard; reside at Stamford, Conn. I am engaged in the coal business at 9 Pine street, New York City, under the firm-name of Quintard, Ward & Co.

Q. 2. How long have you been engaged in the coal business?

A. About 20 years.

Q. 3. Where have you been engaged in that business?

A. In New York City.

Q. 4. Are you acquainted with the different kinds of anthracite coal sold in this market?

A. I am.

110 Q. 5. Have you any knowledge of the market for anthracite coal in the Eastern States?

A. I have.

Q. 6. In what portion of the Eastern States?

A. All New England.

Q. 7. Do you know of the existence of a company called the Delaware & Hudson Canal Co., the complainants in this suit?

A. I do.

Q. 7. Does that company produce coal and bring it to this market for sale?

A. Yes.

Q. 9. How long have you known the coal produced by The Delaware and Hudson Canal Company?

A. Twenty years, or over.

Q. 10. By what name is that coal known in this market?

A. Lackawanna.

Q. 11. By what name is it known in the eastern market?

A. Lackawanna.

Q. 12. How long have you known the complainants' coal by that name?

A. I have never known it by any other; always.

Q. 13. What does that name indicate to a purchaser of the coal?

A. It indicates the coal of the Delaware and Hudson Canal Company.

111 Q. 14. Is the name "Lackawanna," as applied to coal, useful and valuable to the public?

A. I should think it was.

Q. 15. How does the coal produced by the complainants sta market, compared with other anthracite coal mined in Nort Pennsylvania?

A. It is the best prepared coal coming from that section.

Q. 16. How is it better prepared than other coals coming fr section?

A. In the first place it has the preparation incidental to all c ... being broken and slated at the mines; it is then carried to Honesdale, and is there again sorted and cleaned.

Q. 17. Does the coal produced by the complainants bring a higher or

A. So as to distinguish each compan*ie*'s coal, I suppose.

X. 36. Were not those coals so designated because they came from the Lehigh and Schuylkill coal regions?

(Obj. to.)

A. Well, I can't tell you why. The Lehigh Company called their coal Lehigh, and the Schuylkill called theirs Schuylkill, and they
106 were known in the market as such.

X 37. Do you not know that the Lehigh coal is mined in a district known as the Lehigh coal region?

(Obj. to.)

A. I never was there myself, but I presume the Lehigh Company got their coal out of that region.

X 38. Is not the name which the coal bears in the market taken from the name of the district from which it is brought?

(Obj. to.)

A. Well, I presume so.

X 39. Is not the same fact true in regard to the Schuylkill coal?

(Obj. to.)

A. The reason that name is given Schuylkill is, I suppose, because they give it that name, and the same, I suppose, with the Lehigh.

X 40. Is there more than one company that mines its coal from the district known among the coal trade as the Lehigh district?

(Obj. to.)

A. I can't tell you; but think that *difererent* companies get out the Lehigh coal from the same region.

107 X 41. Is not that coal sold in the New York market as Lehigh coal?

(Obj. to.)

A. Lehigh coal is sold as Lehigh coal.

X 42. Is not coal sold from the Schuylkill region sold under the name of Schu'lkill coal?

A. I presume it came from that region. There are different kinds of Schuylkill coal—the white ash and red ash.

X 43. Do you know of any coal coming from the Schuylkill region which is sold in this market under any other name than that of Schuylkill coal?

(Obj. to.)

A. There is Schuylkill coal brought to market here, and sold by other names than the name of Schuylkill; there is red ash and white ash, but it is all known as coming from Schuylkill region, and the same as to Lehigh coal; there are several qualities of that.

X 44. Is there any coal from the Lehigh region sold in this market under any other name than that of Lehigh coal?

A. There is.

X 45. What coals are so sold?

108 A. Buck Mountain, I think, is a Lehigh coal.

Adjourned to the 15th inst., at 12 m.

FRIDAY, *Jan'y* 15, 1869.

Present, counsel for the respective parties.

Adjourned to the 19th inst., at 2 p. m.

TUESDAY, *January* 19, 1869.

Present, counsel on both sides.

Adjourned to the 20th inst., at ½ p. m.

109 WEDNESDAY, *Jan'y* 20, 1869.

Present, counsel on both sides; the counsel for defendant appearing, and reserving the right of objection to any question on the direct examination of this witness.

EDWARD H. QUINTARD, called and sworn as a witness on the part of the complainants, deposes and says:

Q. 1. What is your name, residence, business, place of business, and the name of your firm?

A. Edward A. Quintard; reside at Stamford, Conn. I am engaged in the coal business at 9 Pine street, New York City, under the firm-name of Quintard, Ward & Co.

Q. 2. How long have you been engaged in the coal business?

A. About 20 years.

Q. 3. Where have you been engaged in that business?

A. In New York City.

Q. 4. Are you acquainted with the different kinds of anthracite coal sold in this market?

A. I am.

110 Q. 5. Have you any knowledge of the market for anthracite coal in the Eastern States?

A. I have.

Q. 6. In what portion of the Eastern States?

A. All New England.

Q. 7. Do you know of the existence of a company called the Delaware & Hudson Canal Co., the complainants in this suit?

A. I do.

Q. 7. Does that company produce coal and bring it to this market for sale?

A. Yes.

Q. 9. How long have you known the coal produced by The Delaware and Hudson Canal Company?

A. Twenty years, or over.

Q. 10. By what name is that coal known in this market?

A. Lackawanna.

Q. 11. By what name is it known in the eastern market?

A. Lackawanna.

Q. 12. How long have you known the complainants' coal by that name?

A. I have never known it by any other; always.

Q. 13. What does that name indicate to a purchaser of the coal?

A. It indicates the coal of the Delaware and Hudson Canal Company.

111 Q. 14. Is the name "Lackawanna," as applied to coal, useful and valuable to the public?

A. I should think it was.

Q. 15. How does the coal produced by the complainants stand in the market, compared with other anthracite coal mined in Northeastern Pennsylvania?

A. It is the best prepared coal coming from that section.

Q. 16. How is it better prepared than other coals coming from that section?

A. In the first place it has the preparation incidental to all coals, of being broken and slated at the mines; it is then carried to Honesdale, and is there again sorted and cleaned.

Q. 17. Does the coal produced by the complainants bring a higher or

A. So as to distinguish each compan*ie*'s coal, I suppose.

X. 36. Were not those coals so designated because they came from the Lehigh and Schuylkill coal regions?

(Obj. to.)

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(Obj. to.)

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A. There is.

X 45. What coals are so sold?

108 A. Buck Mountain, I think, is a Lehigh coal.

Adjourned to the 15th inst., at 12 m.

FRIDAY, *Jan'y* 15, 1869.

Present, counsel for the respective parties.

Adjourned to the 19th inst., at 2 p. m.

TUESDAY, *January* 19, 1869.

Present, counsel on both sides.

Adjourned to the 20th inst., at ½ p. m.

109 WEDNESDAY, *Jan'y* 20, 1869.

Present, counsel on both sides; the counsel for defendant appearing, and reserving the right of objection to any question on the direct examination of this witness.

EDWARD H. QUINTARD, called and sworn as a witness on the part of the complainants, deposes and says:

Q. 1. What is your name, residence, business, place of business, and the name of your firm?

A. Edward A. Quintard; reside at Stamford, Conn. I am engaged in the coal business at 9 Pine street, New York City, under the firm-name of Quintard, Ward & Co.

Q. 2. How long have you been engaged in the coal business?

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A. I do.

Q. 7. Does that company produce coal and bring it to this market for sale?

A. Yes.

Q. 9. How long have you known the coal produced by The Delaware and Hudson Canal Company?

A. Twenty years, or over.

Q. 10. By what name is that coal known in this market?

A. Lackawanna.

Q. 11. By what name is it known in the eastern market?

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Q. 12. How long have you known the complainants' coal by that name?

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A. It indicates the coal of the Delaware and Hudson Canal Company.

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A. I should think it was.

Q. 15. How does the coal produced by the complainants stand in the market, compared with other anthracite coal mined in Northeastern Pennsylvania?

A. It is the best prepared coal coming from that section.

Q. 16. How is it better prepared than other coals coming from that section?

A. In the first place it has the preparation incidental to all coals, of being broken and slated at the mines; it is then carried to Honesdale, and is there again sorted and cleaned.

Q. 17. Does the coal produced by the complainants bring a higher or

lower price in this market than other coal from the same section of country?

A. I should think the average price was higher. I would give more for it myself.

Q. 18. Is the same true in respect to the eastern market?

A. I should think so.

112 Q. 19. Were you at one time connected with The Delaware, Lackawanna and Western Railroad Company in an official capacity; and if so, what was that capacity?

A. I was for about five years, as agent and assistant president, from 1858 to 1862.

Q. 20. Did that company to your knowledge, devise a name for the coal produced by them; and if so, what was that name?

A. They adopted the name of "Scranton coal."

Q. 21. By what name is their coal known in market?

A. Scranton coal.

Q. 22. How long has it been so known?

A. Always; ever since they first began to produce.

Q. 23. Is it ever known in the trade by any other name?

A. No, sir.

Q. 24. By what name is the coal produced by the Pennsylvania Coal Company known in the trade?

A. Pittston coal.

Q. 25. Is that ever known by any other name in market?

A. No, sir.

113 Q. 26. Are those three coals, the Lackawanna, the Scranton, and the Pittston, produced from about the same section of country?

A. Yes, sir.

E. A. QUINTARD.

Adjourned to the 26th inst., at 2, p. m.

TUESDAY, *Jan'y 26th inst., at 2 p. m.*

Present, counsel for the respective parties.

Mr. Rudd, counsel for defendant, not being present on the direct examination, says he has no objections to make to the above testimony.

Cross-examined by Mr. Rudd, counsel for defendant:

X 27. State whether or not to your knowledge, dealers in coal do not sell the coal of the Pittson and Scranton companies, as Lackawanna coal.

(Obj. to.)

A. I should say they do.

114 X 28. For how many years do you know this to have been done?

A. Ever since Pittston and Scranton has been in the market.

E. A. QUINTARD.

Subscribed and sworn to before me this 26th Jan'y, 1869.

R. E. STILWELL,
Examiner, &c.

Adjourned to the 27th, at 1½ p. m.

115 WEDNESDAY, *January* 27, 1869.

Present, counsel as before.

WILLIAM H. HOPKINS called and sworn as a witness on the part of the complainants, deposes and says:

Q. 1. Where do you reside; what is your business; where is your place of business; and what is the name of your firm?

A. Providence, R. I.; I am a coal dealer at Providence, and the name of our firm is Manchester, Hopkins & Co.

Q. 2. How long have you been engaged in business as a dealer in coal in Providence?

A. Since 1856.

Q. 3. Do you know of the existance of a company called the Delaware and Hudson Canal Company, who are the complainants in this action?

A. I do.

Q. 4. How long have you known such company; and how long have you known coal produced by such company?

A. I think I purchased my first cargo of coal of them in 1856
116 or 1857. That is my first knowledge of them.

Q. 5. Have you been in the habit of purchasing coal of them annually, since?

A. I have not.

Q. 6. How frequently have you purchased coal of them since?

A. I think every year, with the exception of two.

Q. 7. Have you purchased coal and dealt in the coal called Scranton coal?

A. We have.

Q. 8. How long have you known that coal?

A. For very nearly the same length of time.

Q. 9. Have you dealt in Pittston coal?

A. I have.

Q. 10. How long have you known that coal?

A. About the same length of time.

Q. 11. By what name is the coal the production of the Delaware and Hudson Canal Company known in the market?

(Obj. to.)

A. Lackawanna.

117 Q. 12. How long have you known such coal by that name?

A. As long as I have known the coal.

Q. 13. About how many years is that?

A. About twelve or thirteen.

Q. 14. Whose production, if any, does the name "Lackawanna" to you indicate, as a purchaser of coal?

A. The Delaware and Hudson Canal Company.

Q. 15. Whose production does the name "Scranton" indicate to you?

A. That brought to market by the Delaware, Lackawanna and Western Railroad Company, and sold by them.

Q. 16. Whose production does the name "Pittston" indicate?

A. The Pennsylvania Coal Company.

Q. 17. How does the coal produced by the Delaware and Hudson Canal Company stand in the Providence market, compared with the Scranton and Pittston coal?

A. No. 1. First.

Q. 18. Is the coal produced by the complainants superior to the Scranton and Pittston; and, if so, in what does its superiority consist?

A. I think it superior as a steaming coal, or coal for generating steam in many places. It is freer burning, and ordinarily better prepared for domestic purposes.

118 Q. 19. About what is the extent of your sales of coal?

A. They exceed 100,000 tons a year.

Cross-examined by Mr. Rudd:

X 20. Are you, or not, the agent of the Delaware and Hudson Canal Company, in the city of Providence?

A. We are not.

X 21. State what relation you have, if any, with said company.

A. We buy very largely of them, and sell their coal under their instructions, for a commission.

X 22. State whether, or not, you are, at present, engaged in selling, exclusively, coal of complainants.

A. We are not.

X 23. Have you any arrangement or understanding with the complainants in regard to the sale of their coal, differing from the understanding you have with the Pittston or Scranton companies?

A. Pittston coal we have not sold for two or three years, more or less. I do not recollect how long. Scranton coal we buy at auction. The Delaware and Hudson Canal Company we have no arrangement

119 with reference to selling their coal, unless one has been made or completed since I left their office this afternoon.

X 24. Have you not, until recently, occupied the position as agent for the city of Providence and its vicinity?

A. I never did, except one year when we retailed a little coal for them; they paying rent of the yard.

X 25. Have you not received a stated commission upon all coal of the complainants sold in the city of Providence during the past year?

A. We have sold all their coal sold in the city of Providence, upon which we get a commission, so far as my knowledge goes.

X 26. For how many years past have you received a commission on the sale of coal of the complainants sold in the city of Providence?

A. Perhaps eight years. The understanding heretofore with them is that we were to have the exclusive sale of their coal, on a commission. We have had the exclusive sale of their coal in our market for one year, and the domestic coal for two years.

X 27. Have you known of the defendant selling Pittston or Scranton coal in the city of Providence, as Lackawanna coal; and, if so, for how long?

120 A. During the year that the complainants had a yard in Providence, which, I think, was in 1860, or about that time, my attention was called to the fact by Mr. Souther, the president. I may have known of it before.

X 28. Do you know of any other parties than the defendant having sold Scranton or Pittston coal as Lackawanna during that period?

A. I have heard parties say that they had bought Lackawanna coal of other companies than the complainants, and I had reason to say that they hadn't any genuine Lackawanna. I mean the coal of the complainants.

(Answer obj. to.)

X 29. Has not your firm, or some person in your employ, during the last ten years, sold either the Pittston or Scranton coal as Lackawanna coal?

A. Not to my knowledge.

X 30. Can you state positively that it has not been done?

A. I cannot.

X 31. State whether or not dealers in coal in the city of Provi-
121 dence, or elsewhere, do not, to your knowledge, sell the Scranton and Pittston coal, or either of them, as Lackawanna coal.

A. My impression is that they do sell Scranton, and they have done so perhaps five years, more or less.

X 32. State whether or not the complainants have not erected in the city of Providence, at coal yards, a sign or signs bearing the words, "Old Company's Lackawanna Coal."

A. I think they never did.

X 33. Is there any sign bearing those words erected in the city of Providence, to your knowledge?

A. Yes, sir.

X 34. Where is it?

A. It is on Dyer street, on a building occupied by my son and brother; occupied as a coal yard; my impression is that it was put there in 1862 or 1863; I would not be positive on that point; it was put up there to cover up some old signs.

X 35. Under whose directions was that sign erected?

A. I think, myself.

X 36. Who paid for the painting and erection of that sign?

122 A. I do not know; the sign was taken from another place, and stored on our premises, the way it came in our possession, and was taken down by the occupants of the building upon which the sign was first erected.

X 37. Under whose directions was that sign originally painted and put up?

A. I think Walter Lawton.

X 38. Was he not the agent of the complainants, in the city of Providence?

A. I do not know; he sold their coal.

X 39. Was Walter Lawton at any time the agent of the complainants in Providence?

A. I have heard that he was not, but was permitted to sell their coal for a commission.

X 40. Has not this sign been erected for a number of years on premises occupied by the complainants or their agents?

A. I think it was not on the premises while it was occupied by the complainants—I think—I am positive.

X 41. Has that sign ever been erected on any premises which
123 were not at the time occupied by parties either acting as agents of the complainants, or specially interested in the sale of their coal?

A. I think it has never been on any building excepting where this coal was sold.

Direct resumed:

Q. 42. Have you any personal knowledge on the subject of dealers in coal in Providence, or elsewhere, other than the defendant selling Scranton or Pittston coal as Lackawanna?

A. I don't know that I have personal knowledge even of the defendant's selling it; I have reason to believe that they do.

Q. Is all your testimony on this subject based upon hearsay?

A. No, sir.

Q. 44. What portion of it is based upon hearsay?

A. The Preston Coal and Iron Company; their coal is called Preston coal; Hill and Harris mine coal, is called Hill and Harris coal; Hammet & Neal: there coal is called Broad Mountain coal. New York and Schuylkill Coal Company mined coal under the name of Black Heath coal. Shamokin Coal Company: this coal is called Shamokin coal. Hickory Coal Company: some of this coal is called Hickory coal, and some Draper coal. These coals are all from the Schuylkill region.

X 65. What is the name of the company which produces the coal known in market as Lehigh coal?

A. Lehigh Coal and Navigation Company.

Q. 66. In what section of the country is that coal mined?

A. Lehigh region.

Q. 67. You have stated in your cross-examination that there is coal brought to this market from the Lehigh region which is sold under other names than that of Lehigh coal; state what companies
131 produce coal from the Lehigh region, and what the particular name of each company's coal is, so far as your knowledge extends.

A. A. Pardee & Co. produce coal called Hazleton coal. A. T. Stout & Co.: one of their coal mines is called Stout coal, and the other Fulton coal. Randolph & Brother produce coal called Spring Mountain coal; Honeybrook Coal Company produce coal called Honeybrook coal; E. A. Patchen & Co. produce coal called Sugar Loaf. These are all from the Lehigh region.

Q. 68. Is there a mining region known as the Wyoming region?

A. There is.

Q. 69. What particular companies mine coal in that region, and under what name is this coal sold in the market, so far as your knowledge extends?

A. The Delaware and Hudson Canal Company produce coal called Lackawanna coal; the Pennsylvania Coal Company produce coal called Pittston coal; the Delaware, Lackawanna and Western Railroad Company produce coal under the name of Scranton coal; Wilkes-
132 barre Coal and Iron Co. produce coal called Wilkesbarre coal; Samuel Bonnell, jr., produce' coal called Wyoming coal, and another coal called Shawnee coal. These *are* come from the Wyoming region.

Q. 70. Is the Wyoming region sometimes known as the Lackawanna region?

A. It is.

Q. 71. Can you now state what year or years the complainant sold the production of the Pennsylvania Coal Company, and the products of your own company mixed together?

A. It was in 1851 or 1852?

Q. 72. Did the complainants in those years purchase the product of the Pennsylvania Coal Company?

A. I believe not; we sold the coal and accounted to them for it.

Q. 73. When did they deliver their coal to the complainants?

A. I am not able to state whether we furnished boats to bring it down, or they did.

ISAAC N. SEYMOUR.

Adjourned to the 9th, at 2. p. m.

133 TUESDAY, *February 9th*, 1869.

Present, counsel as before.

RICHARD HECKSCHER, called and sworn as a witness on the part of complainants, deposes and says:

Q. 1. What is your age, residence, and occupation?

A. 46 years of age; reside at New Rochelle, Westchester County, and am not in any business at present.

Q. 2. What has been your occupation heretofore?

A. I have been mining, shipping, and selling coal for the last twenty years and over, to the beginning of 1865.

Q. 3. Where have you been so engaged in business?

A. My mines were in Schuylkill County, Pennsylvania, and I shipped coal from Richmond and Philadelphia, and sold it all over the United States.

Q. 4. Are you acquainted with the different kinds of anthracite coal, their quality, and market value in the New York and the New England markets?

134 A. Yes, sir; I know most of the important coals mined in the United States.

Q. 5. Do you know, and if so, for how long a time have you known, a coal-mining company, called the Delaware and Hudson Canal Company?

A. I knew that company ever since I have been in the coal business, over 20 years.

Q. 6. Does that company produce and bring to market anthracite coal?

A. Yes, sir.

Q. 7. By what name is that coal known in the market?

A. I have always known it by the name of Lackawanna coal, and to be bought under that name.

Q. 8. Is it known in the market by any other name?

A. Well, I don't believe in the market it is known by any other name than Lackawanna coal.

Q. 9. Whose production, if any, does the name Lackawanna coal indicate to a purchaser of coal?

A. The Delaware and Hudson *Coal* Co. coal—anyhow the coal which they sell.

135 Q. 10. How does Lackawanna stand in this market as compared with Scranton and Pittston coal?

A. I think it grades higher than either of them, and brings a higher price generally.

Q. 11. Is the same true of the New England market?

A. Yes, sir; as far as my knowledge extends it is.

Q. 12. Are there various companies mining and bringing to market coal from what is known as the Lehigh region?

A. Yes, sir; quite a number.

Q. 13. Please enumerate the different companies, and the names adopted by such companies in the Lehigh region?

A. I can give from memory but a few companies and individuals. The largest and oldest coal company is the Lehigh Coal and Navigation Company; their coal is sold and known in the market as the "Old Lehigh Company's coal;" and there is the German Pennsylvania Coal Company; they have no separate name. A. Pardee & Co. *is* the largest individual miners. I don't know the different names

136 they have, but they have five or six different coll'erries.

Q. 14. About how many companies are there mining coal in the Lehigh Valley?

A. 25 or 30.

Q. 15 About how many companies and individuals are there now mining coal in Schuykill region?

A. About 140.

Q. 16. Do these companies and individuals generally adopt particular names by which to designate their coal?

(Obj. to.)

A. Yes, sir; in most cases.

Q. 17. Is there any particular company or individual in the Schuylkill district whose coal is called Schuylkill coal, as distinguished from the other companies?

A. No.

Q. 18. What company produces and brings to market the coal known as Scranton coal?

(Obj. to.)

A. The Delaware, Lackawanna and Western Railroad Company.

Q. 20. What company produces and brings to market the coal known as Pittston coal?

(Obj. to.)

137 A. The Pennsylvania Coal Company.

Q. 21. What is the name of the valley where Lackawanna coal, Scranton coal, and Pittston coal are mined?

A. It is sometimes called the Wyoming valley, and sometimes the Lackawanna region.

Cross-examined by Mr. Rudd:

X 22. Are the limits of what is known as the Wyoming Valley the same as those of the Lackawanna region?

A. They are one and the same thing.

X 23. Is not the coal, coming from the Lehigh region, known generally by dealers in coal, under the name of Lehigh coal?

A. That name merely designates the county from which the coal comes, but not the particular kind of Lehigh coal—to make a difference between the Lackawanna, Pittston, Scranton, and Schuylkill coal.

X 24. Is not the coal, coming from the Schuylkill region, known generally as Schuylkill coal?

A. In general terms it is known as that coal, but not bought
138 without some further designation of the veines or party by whom it is mined. Our coal is known as the Hecksher coal.

X 25. Is not the coal, spoken of as Scranton and Pittston mined in the same region *and* the coal of the Delaware and Hudson Company?

A. Yes, sir; the Delaware and Hudson is mined in the eastern portion; the Scranton in the centre, and the Pittston at the western end.

X 26. Do not dealers in coal speak generally of the coal coming from the Lackawanna region as Lackawanna coal?

A. No, sir.

X 27. Is not the term ever so applied, by the trade, to you knowledge?

A. No, sir.

X 28. Is not the coal of the complainants ever designated among the trade as Old Company Lackawanna coal?

A. Not to my knowledge.

RICH'D HECKSCHER.

Subscribed and sworn to before me this 9th February, 1869.
R. E. STILWELL,
Examiner, &c.

Adjourned to the 10th inst. at 2 p. m.

139 WEDNESDAY, *February 10th*, 1869.

Present, counsel for the respective parties.
Adjourned to the 12th inst., at 2 p. m.

FRIDAY, *February 12th*, 1869.

Present, counsel for the respective parties.
Adjourned to the 13th inst., at 12 m.

SATURDAY, *February* 13, 1869.

Present, counsel on both sides.

ISAAC N. SEYMOUR. Examination continued.

Cross-examined by Mr. Rudd:

X 74. Do you know of any other producer of coal than your own company which has used, or does now use, the term Lackawanna, as applied to coal?

A. I do not.

X 75. Did you ever hear of a coal company designated the Boston and Lackawanna Coal Company?

140 A. I am not aware of it. There may be such a company.

X 76. Did you *not* never hear of your company's purchasing coal from a company of that name?

A. I have no knowledge of it.

X 77. Do you remember ever having paid any such bills to any company bearing in its designation the term Lackawanna, as applied to coal?

A. No; I do not remember. When bills are presented, I don't notice what company they , or bear them in mind.

X 78. Do you know personally that the defendant has ever sold the coal produced by the Delaware, Lackawanna and Western Railroad Company, or by the Pennsylvania Coal Company, as and for the coal of the complainants?

A. Not to my knowledge.

X 79. Do you know personally under what name applied to the coal the defendant purchases coal from the Delaware, Lackawanna and Western Railroad Company, and from the Pennsylvania Coal Company?

A. I do not.

141 X 80. When did you or the complainants, to your knowledge, first hear of any person selling the coal produced by any other parties than the complainant, under the name of Lackawanna?

A. I have no personal knowledge—nothing but hearsay. I first heard of it two or three years ago that Mr. Clark was selling coal under our name.

X 81. Was that the first time, to your knowledge, that the complainants ever heard of coal other than their own being sold as and for Lackawanna coal?

A. I don't think it was the first time. Retailers of very little responsibility call other coal than ours Lackawanna coal. I have heard such

reports for six or seven years, that persons were selling coal for Lackawanna, when it was not.

X 82. Have not you known that fact for a longer period than that you mentioned?

A. I presume so. I have no doubt it is longer than that.

X 83. Have the complainants ever instituted legal proceedings against any other person than this defendant for such use of the *of the* term Lackawanna coal?

142 A. *I have no Lackawanna coal.*

X 84. If they had done so, would not the fact have been within your knowledge?

A. I think so. Still, it might have been, and I not remember it.

X 85. Look at the paper now shown to you, and state whether or not it was issued by the complainants.

A. Yes; it was issued by the Delaware and Hudson Canal Company.

(The papers put in evidence, and marked defendant's Exhibit 1, February 13, 1869.)

X 86. Have you any personal knowledge as to whether the word Lackawanna was first used as the name of a district, or as the name of a river, or as the name of complainants' coal?

A. I have no distinct recollection of that.

X 87. State whether or not the business of the complainants has increased or diminished during the last two years, as compared with the business done by them in previous years.

A. It has increased.

X 88. Has it not increased largely?

143 A. Some two or three years we have increased 100,000 tons each year. In 1867 we got about 1,500,000 tons, and in 1868 we reached about 1,600,000. I think we must have got, in 1866, 1,400,000 tons, and the present year we expect to get 2,000,000 tons.

X 89. Have not the complainants sold there family stove coal at a lower price, during the last year at their yards and at Rondout, than the coal of the Delaware, Lackawanna and Western has brought?

A. I should think not. I don't know of my own knowledge. We have generally retailed our coal at a higher price than the Delaware, Lackawanna and Western Railroad Company and Pennsylvania. We have a yard at 14th street, very near the Pennsylvania Coal Company's yard, and we are selling coal from 25 to 50 cents higher than they do, as I am informed and verily believe.

X 90. State the lowest prices at which the complainants have sold their family stove coal at their yards during the past year, and

144 the periods of the year at which such sales were made; also, the number of tons of family stove-size coal that complainants have sold and delivered at Roundout, during the past year, at the rate of $4 50 per ton, or at a less rate than that; the parties to whom such sales were made; the dates and prices at which they were made, and the amount of commissions deducted.

(Obj. to.)

A. I can't state it.

(Counsel for defendant notifies witness to examine the books and give an answer.)

X 91. Have the complainants, to your knowledge, ever sold any coal to the defendants?

A. I think so—to Jackman & Clark, and, perhaps, to Mr. Clark, individually.

Direct resumed by Mr. Bates:

Q. 92. You speak, in your cross-examination, of retailers of small or no responsibility using your name of Lackawanna coal; what was the nature of these reports in general?

145 A. We occasionally heard them.

Q. 93. Were those retailers generally large or small dealers? (Obj. to.)

A. They were generally small dealers.

Q. 94. Did the complainants make it a custom, generally, to call the attention of those retailers to the subject; and, if so, in what manner?

A. I could not answer as to that.

Q. 95. What is the basis of your estimate that the business of the company will increase 400,000 tons?

A. We have bought a coal company out, for one thing, and we are opening new mines, by which we expect to get the additional quantity named.

X 96. Was the past year an exceptional one as to the price of coal, and was coal fluctuating in price, or otherwise? (Obj. to.)

A. The price in the spring was very low, I think, and it run through the summer; in the fall it rose very much, and has continued so

146 till the present time; we are retailing at the present time for $8 50. A large portion of our coal was contracted for in the spring, at low prices, and we delivered it through the fall under those contracts.

Q. 97. Were these contracts made when the price of coal was low, and did coal advance in kind after that?

A. They were, and coal advanced afterwards.

Q. 98. Were the deliveries under those contracts principally made during the time coal was at its highest price or thereabouts?

A. Yes; we were delivering them throughout the season up to the close of the canal.

Q. 99. Did the Delaware, Lackawanna, and Western Railroad Company sell their coal during the past year principally by auction sales held monthly?

A. They did.

ISAAC N. SEYMOUR.

Subscribed and sworn to before me this 13th February, 1869.

R. E. STILWELL,
Examiner, &c.

Adjourned to the 23d inst., at 11 a. m.

147 Circuit court of the United States for the southern district of New York.

THE PRESIDENT, MANAGERS, & CO. OF THE Delaware & Hudson Canal Co.
vs.
HENRY C. CLARK.

Testimony taken on the part of the defendant, for final hearing, by R. E. Stilwell, examiner, &c., under the 67th rule of the Supreme Court of the United States, as amended.

MONDAY, *March 29th*, 1869.

Present, E. B. Rudd, esquire, counsel for defendant; L. W. Bates, esquire, counsel for complainants.

Adjourned to the 31st inst., at 2 p. m.

WEDNESDAY, *March 31st, at 2 p. m.*

Present, counsel for the respective parties.

WALTER LAWTON, called and sworn as a witness on the part of the defendant, deposes and says:

Q. 1. What is your name, age, residence, and occupation?

148 A. Walter Lawton; 45 years of age; reside at Pottsville, Pennsylvania, and am in the coal business.

Q. 2. How long have you been connected with the coal business?

A. I have been in active coal business about 20 years.

Q. 3. Have you ever had any business connected with the Delaware and Hudson Canal Company; and if so, in what capacity?

A. I was their New England agent.

Q. 4. During what period, and at what place?

A. About 12 years ago; at Boston and Providence.

Q. 5. State whether or not at that time, and while acting in that capacity, you had a sign painted and erected in the city of Providence for the purpose of advertising the coal of the complainants; and if so, what was that sign?

(Obj. to as leading.)

A. I had; it was "Old Company Lackawanna Coal."

Q. 6. Do you remember who painted that sign?

A. No, sir; I do not.

Q. 7. Do you remember who introduced you to the painter of it?

(Obj. to as incompetent.)

A. It was Mr. Hopkins, of the firm of Manchester & Hopkins.

149 Q. 8. Why did you procure that sign to be painted and erected?

(Obj. to.)

A. To designate the coal I was selling from what Mr. Clark was selling.

Q. 9. What coal was you selling at that ttme?

A. I was selling coal of the old company.

Q. 10. Do you mean the coal of the complainants, the Delaware and Hudson Coal Co.?

(Obj. to. Question withdrawn.)

Q. 11. What coal do you refer to in your last answer?

A. The Delaware and Hudson Canal Co.

Q. 12. What coal was Mr. Clark selling at that time?

A. The Scranton coal, known as the Delaware and Lackawanna, Western Railway Company's coal.

Q. 13. During the time that you were agent of the complainants in New England did you have any conversation with the officers of the company in regard to parties selling other coal than that of complainants, as Lackawanna; and if so, what was that conversation?

A. I did so. I complained to Mr. Souther, the vice-president of the company, that others were selling Lackawanna coal not shipped

150 by this company, and wished to know, in getting up my sign, how I should designate their coal. The reply was, Have on the sign "Old Company's Lackawanna Coal," which I had done accordingly.

Cross-examined on the part of the complainants:

X 14. Is Mr. Souther the vice-president of the company now?

A. I think not, sir.

X 15. Have you an office at Providence, at the present time?

A. I have not.

X 16. How long is it since you ceased to have an office at that place?

A. When I resigned my agency of the company; about 9 years ago, I think.

X 17. Did the Delaware and Hudson Canal Co. give you the exclusive privilege of selling their coal shipped by them to Providence?

(Obj. to as irrelevant.)

A. As far as my knowledge extends, they did; I was their only and sole agent in New England.

(Counsel for complainant objects to the last part of the answer, and moves to strike it out as not responsive to the *answer*.)

X 18. Did they pay you a salary for your services?

(Obj. to.)

151 A. No, sir; they did not. I sold on commission.

WALTER LAWTON.

Subscribed and sworn before me this 31st March, 1869.

R. E. STILWELL,
Examiner, &c.

Adjourned to the 6th April, at 2 p. m.

TUESDAY, *April 6th*, 1866.

Present, counsel for the respective parties.

Adjourned to the 7th inst., at 2 p. m.

WEDNESDAY, *April 7th*, 1869.

Present, counsel for the respective parties.

HENRY C. CLARK, called and sworn as a witness on the part of defendant, deposes and says:

Q. 1. What is your name, age, residence, and occupation?

A. Henry C. Clark; 46 years of age; reside at Providence, R. I.; and am in the coal business.

Q. 2. How long have you been in the coal business?

152 A. About 29 years.

Q. 3. At what place?

A. At Providence.

Q. 4. Describe more particularly what you mean by the coal business?

A. Buying and selling coal, at wholesale and retail.

Q. 5. Under what name do you buy and sell coal coming from the Lackawanna region?

A. Lackawanna coal.

Q. 6. How long have you done so?

A. For about 29 years, as clerk and in the business.

Q. 7. Give the names of the companies and individuals that mine coal in the Lackawanna region?

A. The Delaware, Lackawanna, and Western Railroad Company; the Pennsylvania Coal Company, and the Delaware and Hudson Canal Company, are the principal miners; there are some others that I do not recollect the names of.

Q. 8. Under what name is the coal mined by the companies mentioned in your last answer generally designated and sold by dealers in coal?

A. They designate it in the trade and by the statistics, and sell it as Lackawanna coal.

153 Q. 9. How long has this been the case?

A. Ever since I have been in the business, so far as my knowledge extends.

Q. 10. Have your purchases and sales of coal, and has your acquaintance with dealers in coal been extensive, or otherwise?

A. I should say it had been extensive.

Q. 11. At what place, or places, and from what parties have your principal purchases been made for the last 12 or 15 years?

A. Formerly I bought considerable of the Delaware and Hudson and Penns'lvania Coal Companies; latterly, mostly of the Scranton, at their place of business, in New York.

Q. 12. State whether or not there are large *large* coal districts besides the Lackawanna; and if so, by what names are they known?

A. The Schuylkill and Lehigh regions.

Q. 13. By what name is the coal coming from those regions known to the trade?

A. That brought by the Lehigh Coal and Navigation Company is called "Old Company Lehigh Coal;" by Pardee & Co., "Hazelton Lehigh;" Stret & Co., is called "Fulton Lehigh;" Randolph coal

154 is called "Spring Mountain Lehigh;" Honeybrook Company's coal is called "Honeybrook Lehigh;" Day, Huddle & Co., advertise "Harleigh Lehigh;" Patchen advertises "Brown Run Lehigh." All these coals are Lehigh coals, known by those names, given to designate the different companies they come from. The Lehigh Coal and Navigation Company being the oldest company, theirs is called "Old Company Lehigh Coal;" the same as the Delaware and Hudson, they being the oldest Lackawanna Co., theirs is called "Old Company's Coal," or "Old Company's Lackawanna Coal."

(The last clause of the answer obj. to, and move to strike it out as not responsive.)

Q. 14. Under what general name, if any, are the different varieties of coal mentioned in the first part of the answer known to the trade?

A. Lehigh coal.

Q. 15. State whether or not the name Lehigh is ever ommitted in designating?

A. So far as my knowledge is concerned, they are all so designated by the name of Lehigh. I so buy and sell mine.

Q. 16. Under what name are the coals coming from the Schuylkill regions known to the trade?

155 A. They are known and placed in the statistics as the Schuylkill coal.

Q. 17. To what do you specially refer when you speak of the statistics of the coal trade?

A. The Miners' Journal, a paper printed at Pottsville, Pennsylvania; The United States Railroad and Mining Register, printed at Philadelphia. There are also other coal authorities—books printed by Mr. Bannon.

Q. 18. Under what head do these authorities place the coal of the Delaware, Lackawanna and Western Road, and the Pennsylvania Coal Company.

(Obj. to; question waived.)

Q. 19. State whether or not the coals of the Delaware, Lackawanna

Co. and the Pennsylvania Co., are taken from the mines adjacent to the mines of the complainants?

A. They are the mines of the complainants; some of them are in Scranton, adjoining the mines of the Delaware, Lackawanna, and Western Railroad Company.

Q. 20. What is the relative value in market of the coals of the three companies last referred to?

156 A. There is a difference of opinion in regard to their quality, each company having customers that prefer their coal. I prefer Pittston, large sizes, for steam; and Scranton, or the Delaware, Lackawanna and Western Railroad Co. for family use.

Q. 21. State whether or not the coal of any one of them, and if so, of which, as a general thing, commands the highest price in the market?

A. I should say the Pittston, for steam purposes, sold for more than either of them; sometimes one sells for the most, and sometimes the other. Last year I think the coal coming from the Delaware & Hudson sold for less than either of the others; that is, the family stove coal.

Q. 22. For what purpose is the coal of the complainants, in the judgment of the trade, best adapted?

A. So far as my knowledge of the judgment of the trade goes, for family use and steam purposes.

Q. 23. State whether or not the complainants have ever sold their coal in the market by any other name than that of Lackawanna coal?

A. They have.

Q. 24. When, where, and whose coal have they so sold?

157 A. Sold it at Providence, and coal produced by themselves. They have so sold for many years by other names than Lackawanna coal. They have sold it for Old Company Lackawanna coal, and as being the product of the Pennsylvania Coal Company, and the Delaware and Hudson Canal Company's mines. The latter is a quotation from their circular, advertising the same.

Q. 25. For how many years has the coal of the complainants been sold as mentioned in your last answer?

A. So far as the coal they sold, mined by the Pittston Company, it was sold in 1850 or 1851. Old Company's has always been sold under that name.

Q. 26. State whether or not you mean to be understood as saying that the complainants have sold the coal of the Pennsylvania Coal Company as their own, and under the name of Lackawanna?

A. The first Pittston coal I ever bought I received from this company as Lackawanna coal, and sold it as Lackawanna coal. I mean the Delaware and Hudson Canal Co.

158 Q. 27. Can you name any other company or party whose coal has been sold by the complainants as their coal, and under the name of Lackawanna?

A. All I know is what Mr. Hart has sworn to, and the statistics of the trade.

Q. 28. Who are the agents of the complainants in the city of Providence?

A. Manchester, Hopkins & Co. are the only agents known in the trade, or the parties having the sale of their coal. This has been the case several years.

Q. 29. What sign, if any, have they upon their premises in Providence, advertising the coal of the complainants.

A. There is a sign adjoining my premises, formerly occupied by them and the Delaware & Hudson Canal Company, bearing the words, "Old

Company Lackawanna Coal." Walter Lawton had the sign painted; George Beverly painted the sign. It originally, I think, had the words, "Old Company's Lackawanna Coal, Walter Lawton, agent." The name of Walter Lawton has been cut off, leaving "Old Company
159 Lackawanna Coal," which sign Manchester, Hopkins & Co. have had upon premises occupied by them seven or eight years.

(Counsel for complainant moves to strike out all answer except the first sentence, as not responsive.)

Q. 30. Did you ever purchase coal from the complainants; and, if so, to what extent, and during what period?

A. I purchased coal from the company for sixteen successive years, with one exception. I could not tell, without reference to my books, what amount.

Q. 31. For how long a period have you been in the habit of selling as Lackawanna coal the coal of the Pennsylvania Coal Company, and the coal of the Delaware, Lackawan' and Western Railroad Company?

A. Ever since it has been in market. I think the Pennsylvania began to ship in 1850 or 1851, and the Delaware and Lackawan'a in 1856 & 1857. That is my impression.

Q. 32. State whether, or not, your doing so during those periods has been within the knowledge of the complainants and their agents?

(Obj. to.)

A. I should say it had. I have talked with Manchester &
160 Hopkins in regard to it, and they have known it for years.

Q. 33. How long is it since you bought coal of complainants?

A. I think about 7 years.

Q. 34. State whether or not the complainants or their agents, or any of them, ever complained to you in regard to your selling the above-mentioned coals as Lackawanna.

A. They never made any complaint to me.

Q. 35. What sign, if any, have you erected on your premises?

A. I have two signs with "Lackawanna Coal" upon them.

Q. 26. Have those signs been there for the last six or seven years.

A. Those, or others bearing the words "Lackawanna Coal," have been.

Q. 37. Do you know of any coal companies, other than the complainants, using the compound term "Lackawanna Coal," to designate the coal produced by them?

A. The Boston and Lackawanna Coal Company, the Lackawanna Coal and Iron Company, the Lackawanna Railroad and Coal Company, the New York and Lackawanna Coal Company, the Lackawanna
161 and Susquehanna Coal Company and Iron Company.

Q. 38. State whether you ever sold or offered to sell coal, coming from other companies than the complainants, as and for their coal.

(Obj. to.)

A. I never did.

Cross-examined by Mr. Bates:

X 39. About what number of tons of coal did you sell annually during the years 1862, 1863, 1864, 1865, & 1866, under the name of Lackawanna coal?

A. I could not tell, without reference to my books. It might be 50,000, and it might be 100,000, during the whole time.

X 40. Would it be as much as 50,000 tons?

A. I should say, yes.

X 41. Did you realize any profit upon those sales; and, if so, about how much per ton?

(Obj. to.)

A. I presume I realized a profit, but could not tell how much, as I never kept any seperate account between that and my other coals.

X 42. Will you swear that that profit equalled or exceeded 25 cents per ton?

(Obj. to.)

162 A. I would not swear to any amount, as I have no means of knowing.

X 43. Did you use, at any time, in your business, envelopes with the representation of your coal yard printed upon them?

A. Yes, sir; and use them now.

X 44. Please look at the envelope now shown you, and state whether that is one of the envelopes used by you in your business.

A. It is.

(Envelope put in evidence, and marked complainant's Exhibit Z.

HENRY C. CLARK.

Sworn and subscribed to before me this 7th April, 1869.

R. E. STILWELL,
Examiner, &c.

Adjourned to the 13th inst., at 2 p. m.

163 TUESDAY, *April 13th*, 1869.

Present, counsel as before.

WILLIAM MERSHON, called and sworn as a witness on the part of the defendant, deposes and says:

Q. 1. What is your age and occupation?

A. 42 years of age, and am in the coal business.

Q. 2. How long have you been in the coal trade, and where do you carry on business?

A. Ever since 1848 or 1849; and have carried on business from that time to July, 1852, in Philadelphia, and since that in New York City.

Q. 3. What kind of coal do you sell?

A. We sell the Lehigh Hazleton coal.

Q. 4. Do you sell it for yourself, or are you agent for other parties?

A. I am agent for A. Pardee & Co.

Q. 5. Are there not other kinds of Lehigh besides those you sell?

A. There are several kinds, called the Spring Mountain, the Buck Mountain, the Harleigh, the Sugar Loaf, the Fulton, the Jeddo; and we have the Cranberry, also, with a number of others. Of these we sell the Jeddo, the Sugar Loaf, and the Cranberry.

164 Q. 6. Does not those different names designate a different kind of Lehigh coal; and are they, or not, sold as Lehigh coal?

A. Yes.

Q. 7. Are there not other coal regions called Schuylkill and Lackawanna regions?

A. Yes.

Q. 8. *Who* are the three principal coal companies on the Lackawanna regions.

A. As I understand them, the Delaware and Hudson Canal Co., the Pennsylvania Coal Company, and the Delaware and Lackawanna and Western Railroad Co.

(Answer obj. to.)

Q. 9. How *are* the coal of those companies placed in the statistics of the trade and known among dealers?

(Obj. to.)

A. As Lackawanna coal.

Q. 10. What books or papers or other authorities so place them?

(Obj. to.)

A. The Miners' Journal, of Pottsville, and a book called "Coal, Iron, and Oil." There are no others that I can refer to just now.

Q. 11. What is known as the leading paper *on* authority in the coal trade?

165 A. The Miners' Journal.

Cross-examined by Mr. Bates, counsel for complainant:

X 12. Where is your place of business in the city of New York?

A. We are tempora'ily at 117 Broadway, room 2.

X 13. What is the name of your firm?

A. A. Pardie & Co. is the name of the firm for which I am agent.

X 14. Are A. Pardee & Co. miners and producers of coal?

A. Yes, sir.

X 15. Where are their mines situated?

A. At Hazleton, Luzerne County, Pennsylvania.

X 16. Do they designate the coal which they produce and sent to market by the name of Hazleton coal for the purpose of distinguishing it from other coals coming from the same section of country?

A. Yes, sir.

X 17. What company or firm produces the coal called Jeddo coal; where is it mined?

A. G. B. Markle & Co. produce it. It is mined in Jeddo, Luzerne County, Penn.

X 18. What company or firm produces the coal called Sugar Loaf coal; where is that mined?

A. A. Pardee & Co. work one mine, and G. B. Linderman & Co. another mine. Linderman & Co., I think, call their place Stock-
166 ton. They are both near Hazleton.

X 19. What company or firm produce the coal called Cranberry coal, and where is it mined?

A. A. Pardee & Co; mined near Hazleton.

X 20. Are these three coals—the Jeddo, the Sugar Loaf, and the Cranberry—so designated by their producers to designate them from other coals coming from the same section of country?

A. Yes, sir.

X 21. Do you buy and sell coal on your own account?

A. No, sir.

X 22. Do you deal in coal coming from what you call the Lackawanna region?

A. No, sir.

X 23. Do you of your own knowledge know any other companies mining coal in that region?

A. I can't say that I do.

X 24. What was the first coal that you dealt in?

A. Schuylkill.

X 25. What company were you engaged in in that coal.

A. Employed as clerk by Wallace & Blakiston.

X 26. When was that; how long were you connected with that
167 firm, and where was the business carried on?

A. In 1848 & 1849, and a month or two in 1850; about a year and a half, altogether, in the city of Philadelphia.

X 27. Did that firm deal in Schuylkill coal exclusively?

A. I believe it did.

X 28. In what kind of coal did you next deal; where, with whom, and how long?

A. In the Schuylkill coal, as a retail dealer for myself, in Philadelphia, part of the year 1850, and part of 1851.

X 29. In what kind of coal did you next deal; where, with whom, and how long?

A. Hazleton coal and other coals mined by A. Pardee & Co., and with them in New York City since July, 1852, to the present time.

X 30. Did you ever deal in coal coming from what you call the Lackawanna region?

A. No, sir.

X 31. Is your knowledge of the name of coal coming from that region derived from the statistics of the trade?

A. It is.

X 32. And are the only books or papers which you can refer to the "Miner's Journal" and the book called "Coal, Iron, & Oil?"

A. The only ones I think of at present.

168 X 33. Do you have any personal knowledge of the Miners' Journal, at Pottsville, other than the fact that there is such a journal published?

A. We have taken the paper some years; no other knowledge.

X 34. Do you know how its information is obtained?

A. No.

X 35. Where is Pottsville.

A. In Schuylkill County, Penn.

W'M MERSHON.

Subscribed and sworn to before me this 13th April, 1869.

R. E. STILWELL,
Examiner, &c.

Adjourned to the 27th inst., at 1½ p. m.

TUESDAY, *April 27th*, 1869.

Present, counsel as before.

Adjourned to the 28th inst., at 1½ p. m.

169 WEDNESDAY, *April 28th*, 1869.

Present, counsel for the respective parties.

MOSES TAYLOR, called and sworn as a witness on the part of the defendant, deposes and says:

Q. 1. What is your name, age, residence, and occupation?

A. Moses Taylor; aged 63; merchant.

Q. 2. State whether or not you are connected with the Delaware, Lackawanna, & Western R'road Co.; if so, in what capacity and for how long?

A. I am; have been a director and manager for the last 15 years.

Q. 3. Under what name is the coal coming from the Lackawanna region known in the market?

A. Lackawanna coal.

Q. 4. From what region does the coal come that is sent to market by the Delaware and Hudson Canal Company, the D. L. & W. R. R. Company, and the Pennsylvania Coal Company?

A. Lackawanna valley.

Q. 5. What difference, if any, is there between the coals mined by the Delaware & Hudson Canal Co. and the Delaware, L. & W. R. R. Co.?

A. No difference.

Q. 6. What was the lowest price at which your family stove-
170 sized coal sold at auction during the last year, delivered at Elizabethport?

A. On the 27th of May, $4 60; the lowest price, delivered to houses in New York & Brooklyn, $6 50.

Q. 7. State whether or not you ever represented to the defendant, Henry C. Clarke, and to others, that the coal mined by your company was Lackawanna coal?

(Obj. to.)

A. I have; I never called it anything else.

Cross-examined by Mr. Bates:

X 8. Does the D., L., & W. R. R. Co. dispose of most of their coal brought to this market at auction, by sales held monthly?

A. They do.

X 9. If the price of coal advances between those sales, you get the benefit of it at the next sale, do you not?

A. It all depends upon the price it sells for at the next sale.

X 10. If the price of the coal advances after one monthly sale, and does not recede before the next monthly sale, coal will bring more at the second sale than at the first?

A. Certainly, if the price is higher.

X 11. The coal brought to market by your company, and so sold by auction, is invariably advertised and sold as Scranton coal, is it not?

171 A. Scranton coal from Lackawanna Valley. The trains are made up at Scranton. The coal comes from Lackawanna Valley, the same as the Delaware and Hudson & the Pennsylvania Coal Company.

X 12. You don't mean to say that the Delaware & Hudson Canal Company sell coal as Scranton coal, do you?

A. I mean to say that they have bought coals at our auction, as well as the Pennsylvania Company; presume their coal is sold as Lackawanna coal. Whether they have sold this as Lackawanna coal, I don't know.

X 13. Do you mean to say, by your second previous answer, that the Delaware & Hudson Canal Company have sold coal of their own production, coming from the Lackawanna Valley, under the name of Scranton coal?

A. I do not; yet it might be called Scranton, as it is mined at Scranton.

X 14. How long has the Delaware, Lackawanna, & Western R. R. Company been engaged in mining coal and bringing it to market?

A. Say from ten to twenty years.

X 15. How long have they used the term "Scranton coal," as applied to coal of their production?

A. I suppose they have always called it Scranton coal, from the Lackawanna Valley.

X 16. If a purchaser of coal enquires in the market for Scranton coal, you would understand him to mean coal of the production of the
172 Delaware, Lackawanna, and Western Railroad Company, would you not?

A. I certainly would.

X 17. Does your company ever sell coal of its own production, and call it Lackawanna coal, without any addition or explanation of any kind, in any manner qualifying the term "Lackawanna coal?"

A. We call it coal, and sell it as Scranton or Lackawanna coal, and it is all the same thing; coal from the Lackawanna Valley, by the way of Scranton.

(Complainant's counsel moves to strike out answer as not responsive.)

X 18. Question repeated.

A. I think I have answered it. I call it Lackawanna coal. We may use Scranton, because Scranton and Lackawanna coal is all one and the same thing.

(Complainant's counsel moves to strike out answer as not responsive.)

X 19. Question repeated.

A. Yes. We sell it as Lackawanna coal, or Scranton coal, either.

X 20. Did your company ever, to your knowledge, sell a pound of coal of its own production, and call it Lackawanna coal; nothing more and nothing less than those two words; and if so, when and to *who?*

173 A. We have sold it to Mr. Clarke, thousands and thousands of tons, and have bought it myself by that name, and used it.

MOSES TAYLOR.

Subscribed and sworn to before me this 28th April, 1869.

R. E. STILWELL,
Examiner, &c.

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175 ISAAC N. SEYMOUR, called and sworn as a witness on the part of the defendant, deposes and says:

Q. 1. Are you prepared to-day to answer question No. 90 in your previous examination?

A. I am not.

Q. 2. When will you be prepared to answer that question?

A. I don't know. I presume it can be obtained from the books. I am not in the employ of the company any longer. I have resigned.

Q. 3. State whether or not the complainants have ever, to your knowledge, requested the defendant not to sell the coal produced by the Delaware, L. & W. R. R. Co., or the Pennsylvania Coal Company, under the name of Lackawanna coal; if so, when and where, and by whom was that request made?

A. I have no knowledge of it. I have seen some letters between Mr. Hartt and Mr. Clarke, but did not see all the correspondence.

(Counsel for defendant moves to strike out last part of answer as not responsive.)

Q. 4. You have stated in your previous testimony that you had heard of parties, several years since, selling coal, other than that produced by complainants, as Lackawanna. State whether or not the defendant was one of those parties of whom you so heard?

176 A. He was.

Q. 5. Have the complainants, to your personal knowledge, ever requested the defendant not to sell any coal under the name of Lackawanna?

A. I do not recollect precisely. I know that they complained that

Mr. Clarke sold coal other than theirs for Lackawanna. Of my own personal knowledge, I do not know.

Q. 6. Have the complainants, to your personal knowledge, ever requested the defendant to remove his signs or any of them; and has he, so far as you know, ever refused to do so?

A. I have no knowledge of any such request.

ISAAC N. SEYMOUR.

Subscribed and sworn to before me this 28th April, 1869.

R. E. STILWELL,
Examiner, &c.

Adjourned to May 4th, at 2 p. m.

177 TUESDAY, *May* 4*th*. 1869,

Present, counsel for the respective parties.

JAMES C. HARTT, called as a witness on the part of the def't, deposes and says:

Q. 1. State the lowest prices at which the complainants have sold their family stove coal at their yards during the past year, and the periods of the year at which such sales were made; also, the number of tons of family stove-sized coal that complainants have sold and delivered at Rondout during the past year at the rate of $4 50 per ton, or at a less rate than that; the parties to whom such sales were made; the dates, and prices at which they were made and the amount of commissions deducted?

A. I don't know any such variety as "family-sized coal."

Q. 2. Can you answer the question as to family stove coal?

A. I cannot.

Q. 3. By what name do you designate the coal sold by you for consumption in ordinary domestic stoves?

A. Grate, egg, or stove, according to the size of the stove or the furnace in which it is to be used.

178 Q. 4. Which of those varieties is ordinarily used in the largest sized stove, or grate?

A. Grate.

Q. 5. Which in the next?

A. Egg.

Q. 6. And which the next?

A. Stove.

Q. 7. What difference is there, if any, in the price ordinarily commanded in the market, by each of these three varieties.

A. At retail, no difference; by cargo, ordinarily from ten to fifty cents, depending upon the condition of the market.

Adjourned to the 14th inst., at 2, p. m.

FRIDAY, *May* 14*th*, 1869.

Present, counsel for the respective parties.

Adjourned to the 25th inst., at 2 p. m.

TUESDAY, *May* 25*th*, 1869.

Present, counsel for the respective parties.

Adjourned to the 26th May, at 2 p. m.

WEDNESDAY, *May 26th*, 1869.

Present, counsel for the respective parties.
Adjourned to June 4th, 1869, at 2 p. m.

FRIDAY, *June* 4, 1869.

Present, counsel for respective parties.
Adjourned to the 16th inst., at 1½ p. m.

179 WEDNESDAY, *June* 16, 1869.

Present, counsel as before.

WILLIAM E. DODGE, called and sworn as a witness on the part of defendant, deposes and says:

Q. 1. What is your name, age, residence, and occupation?

A. William E. Dodge; 63 years of age; reside 203 Madison avenue, and am a merchant.

Q. 2. State whether or not you are connected with the Delaware, Lackawanna & Western Railroad Co.; if so, in what capacity, and for how long?

A. I am, and have been a director since the formation of the company.

Q. 3. For how long have you been conversant with mining of coal in the Lackawanna region or valley, so called?

A. 23 years.

Q. 4. Under what name is the coal coming from that region or valley known in the market?

A. Coal from the Lackawanna and Wyoming valley.

Q. 5. From what region does the coal come which is sent to market by the Delaware and Hudson Canal Co., the Delaware, Lacka
180 wanna & Western Rail Road Company, and the Pennsylvania Coal Co.

A. It comes from the Lackawanna and Wyoming valleys.

Q. 6. State whether or not those three companies are the principal producers of coal in that valley or region?

A. They are the principal producers and sellers of coal and transporters.

Q. 7. State whether or not the Delaware and Hudson Canal Co. mine coal in the same locality with the Delaware Lackawanna and Western Railroad Company, and what, if any, is the difference in the coal of those companies.

A. In many instances their mining is directly contiguous to each other; the general character of the coal in the valley is the same, although there are preferences given to different veins, each company claiming that they have some particular veins better than the others.

Q. 8. By what name does the Delaware, Lackawanna and Western Railroad Company sell their coal?

A. As a matter of convenience, they call it Scranton coal from the the Lackawanna Valley, simply because it is shipped from that
181 point, to designate it from other transporting companies; as it is started from Scranton—as it is all brought from different quarters and shipped from Scranton.

Q. 9. From different quarters of what region or valley, if any, is it brought?

A. From the Lackawanna and Wyoming.

Cross-examined by Mr. Bates.

X 10. In what year was the Delaware, Lackawanna & Western Railroad Co. organized?

A. It was, I think, originally organized in 1348, as the Lackawanna and Western.

X 11. In what year did it first produce and bring to market coal?

A. My impression is that in 1851 and 1852 it began to ship some coal to the west. In 1856 I think it brought its first coal to New York City.

X 12. Has not the coal which this company has produced always been known by the name of Scranton coal?

A. My impression is that it *it* has always been called Lackawanna coal, shipped from Scranton; there is no coal mined in Scranton proper.

X 13. Did your company ever publish to the world any circu-
182 lars, reports, or other documents of any kind, in which they claimed their coal to be Lackawanna coal?

A. I have no doubt they have, although I have no special recollection about it.

X 14. Why have you no doubt they have?

A. Simply because they have no other coal than they mine in the Wyoming and Lackawanna valleys.

X 15. Did you ever see such a published document?

A. I can't answer definitely, though I have no doubt I have many.

X 16. Please state the nature of any of those documents which you have no doubt you have seen?

(Obj' to.)

A. Annual reports and advertisements.

X 17. Have you any of those annual reports with you?

A. I have not.

X 18. Have you any over which you have control, or can obtain possession of?

A. I presume I can find them at the office of the company; I have none myself.

(Witness is requested to produce such annual reports and annex them to his testimony.)

183 X 19. By advertisements, do you refer to the ordinary advertisements of the company relating to the sale of their coal at public auction in this city?

A. Not at auction; but at their yards, and their different agencies.

X 20. Has the company any yards in the city of New York?

A. My impression is now that they have but one or two. They have had a number.

X 21. Were those advertisements you speak of published in any of the New York papers; and if so, what are the names of those papers?

A. I think they have not often been in the habit of publishing in New York papers; still they may have done so.

X 22. In what papers have the advertisements you refer to been published?

A. I did not refer to them as being advertised in the papers. They were reports and circulars I had in my mind. When I used the word advertisement, I meant circular sent out by the yards.

X 23. Have you in your possession or under your control, or can you obtain any of these circulars?

A. I have none under my control, and don't know where I can
184 obtain any. I know that, in the early history of our company, we sent circulars around, but it is a long time since I have seen any of them.

X 24. Have you ever seen, and if so, how frequently, advertisements in the New York papers, relating to the sale of your coal at public auction—I mean the Delaware, Lackawanna, and Western Railroad Company?

A. I have no doubt I have seen these advertizements, but how often I cannot say. I have paid very little attention to it during the last four or five years.

X 25. Do not those advertisements always designate such coal as Scranton coal?

(Obj. to.)

A. It is a long time since I have been there. I don't know that I have looked at one within a year or two.

X 26. What is your recollection on the subject?

(Obj. to.)

A. My recollection is in that case, as in most others, that it is
185 called Scranton coal, because it is shipped from Scranton.

(Obj. to the answer "because it is shipped from Scranton" as not responsive.)

X 27. Is not almost the entire amount of coal brought to this market by that company sold at public auction?

A. A large amount is sold, but not by any means all of it.

X 28. Is three-fourths of that brought to this market sold at auction?

A. There may possibly be three-quarters of it. I cannot tell definitely.

X 29. What officers of the company has charge of preparing those advertisements?

A. Really, I can't answer. I don't know.

X 30. What particular branch of business do you attend to?

A. I don't attend to any particular branch.

X 31. Are you an officer of the company?

A. I am not.

X 32. Do you make personal sales of coal, and have you ever done so?

A. No.

X 33. Do you attend the public sales of coal?

A. Very seldom.

X 34. Who is the sales agent of the company; who makes the public sales?

A. They are made under the direction of the officers. I don't
186 know who has the particular charge of it.

X 35. What particular part of the business does Moses Taylor attend to, if any?

(Obj. to.)

A. I don't know that he attends to any particular part. He is a director, like I am,

X 36. Have you ever known, to your personal knowledge, of the coal produced by the Delaware, Lackawanna, and Western railroad being sold by that company, or under its direction, as Lackawanna coal simply?

A. I am not prepared to say definitely.

X 37. Did you hear the testimony of Moses Taylor on that subject?

A. I heard him testify generally. I don't know particularly what his testimony was.

X 38. Does the Delaware, Lackawanna, and Western Railroad Company sell their coal to the defendants in this action?

A. I have no knowledge except what I have derived from this suit, and I have not known the gentleman before this time.

X 39. Is there any agreement or understanding between that co.,

187 or any of its officers or directors and the defendants that said company will pay the expenses of this suit, or any portion thereof, or reimburse him any of his expenses thereof?

A. I have no idea of anything of the kind. I never heard of anything of the kind.

X 40. Is not the coal produced by the Pennsylvania Coal Co. sold by that company, and known in market as Pittston coal?

A. I have no general knowledge on the subject. I never had any interest in that company.

X 41. Have you any personal knowledge as to the manner in which the *the* coal of the Delaware and Hudson Canal Co. prepare their coal for market?

(Obj. to.)

A. I have no knowledge except in the general way. I have no present knowledge about it.

X 42. Do you considered it an honest transaction that the Delaware, Lackawanna and Western Railroad Co. should assume the name of Lackawanna coal, knowing that it had been used by another company at least 20 years before its existence?

(Obj. to.)

188 A. Perfectly honest, and would be so for any other company who should go into the Lackawanna Valley and take out the coal, and offer to sell it.

Direct resumed by Mr. Rudd:

X 43. What was the name of the company from which the Delaware, Lackawanna and Western Railroad Co. sprung?

A. The Lackawanna Iron and Coal Company.

X 43. About when was that company organized?

A. My impression is in 1846 or 1847.

W. E. DODGE.

Subscribed and sworn to before me this 16th June, 1869.

R. E. STILWELL,
Examiner, &c.

JAMES C. HARTT, called on the part of the defendants, deposes and says:

Q. 1. State the lowest prices at which the complainants have sold
189 their stove coal at their yards during the past year, and the periods of the year at which such sales were made; also the number of tons of such coal that complainants have sold and delivered at Roundout during the past year, at the rate of $4 50 per ton, or at a less rate than that; parties to whom such sales were made; the dates and prices at which they were made, and the amount of commission deducted.

(Obj. to as immaterial.)

A. I cannot.

Q. 2. Can you prepare yourself to do so at the next meeting?

(Obj. to for same.)

A. I don't think I could.

Q. 3. Will you endeavor to do so?

(Obj. to for same.)

A. I will not.

Q. 4. Why not.

(Obj. to for same.)

A. Because I have no means of ascertaining the facts required.

Q. 5. State whether or not the books of the company will disclose these facts?

(Obj. to for same.)

A. I cannot answer; I don't keep the books.

190 Q. 6. Have you any personal knowledge at all; and if so, what, in regard to prices at which the complainants' stove coal is sold, either at their yards or at Roundout?

(Obj. to.)

A. I have a personal knowledge of the present value of stove coal at Roundout?

Q. 7. Have you any personal knowledge in regard to the value of such coal at Roundout during the past year?

(Obj. to:)

A. I have no recollection that can be relied on, upon the subject.

Q. 8. State the substances of your recollection on that subject?

A. I recollect in a general way that we sold stove coal, in conjunction with other sizes deliverable at Roundout, but the different prices at which such coal was sold, I do not carry in my mind.

Q. 9. Did you, during the last year, sell any stove coal, either at your yards or deliverable at Roundout, at the rate of $4 50 per ton, or at a less rate?

191 A. It is quite possible, but I have no definite recollection on the subject.

Q. 10. What is your best recollection?

A. Nothing definite.

Q. 11. State whether or not, if such were the case, the books of the company, and if so, what books, will indicate the fact?

A. I presume the facts can be gathered from the books of the company, but what particular books I cannot say.

X 12. Do you not know that the books of the company would indicate that fact fully, if such were the case?

A. I do not know; it is to be presumed they would.

X 13. How long have you been in the employ of the complainants?

A. Upwards of 19 years.

X 14. In what capacity, during that period?

(Obj. to as having been gone over once before.)

A. As bookkeeper, secretary, and sales agent.

X 15. When did you cease to be secretary?

A. Either 3 or 4 years ago.

X 16. State who, in the office of the complainants, has general charge of their books and accounts.

A. The treasurer of the company has charge of the books at present. His name is Charles P. Hartt.

192 Q. 17. State the yearly receipts of coal of your company since its formation, from the Boston & Lackawanna Coal Company, the Pennsylvania Coal Company, Eaton & Co., the Elk Hill Coal Company, John Jermyn & Co., and from other partes in the State of Pennsylvania?

A. I cannot do it.

(Counsel for defendant notifies the witness to prepare himself to answer this question, and also question No. 1 at the next meeting. The witness says it is entirely impossible.)

Q. 18. Why is it impossible?

A. Because I have no knowledge on the subject; should not know what books to go to ob'ain the information, and have no control of the books, if I did know.

Q. 19. Have you not already in this suit afforded information similar in its character to that which I now call for?

A. I do not recollect. If I have, the records will show it.

Q. 20. Have you not already, during the progress of this trial, examined the books of the company, to enable yourself to answer
193 in regard to purchases made by the complainants from third parties?

A. I don't recollect having made such an examination for the purpose indicated.

Q. 21. Have you made such examination for any purpose connected with your testimony on this trial?

A. I really cannot say, but I presume if I have the fact will be mentioned in the records of my testimony.

Q. 22. If the record shows that you have made such an examination, is there anything to prevent your repeating it?

A. Nothing more than I have already mentioned.

Q. 23. State whether or not any of the coal purchased by your company from the corporations and individuals designated in question 17, has been sold by the complainants as Lackawanna coal?

(Obj. to.)

A. I don't know anything about that; I simply know that all the coal produced by the complainants at tide-water, and upon its canal, is sold as Lackawanna coal, and if any portion of the coal alluded to in question 17 was included in that production, it was so sold.

194 (All the answer after the words "I simply know," obj. to as not responsive.)

Q. 24. Question repeated.

A. I have just answered the question, and have no other answer to give.

Q. 25. Can you state, of your own personal knowledge, that no coal has been sold by the complainants as Lackawanna, except that mined by themselves.

A. My own personal knowledge does not extend to all the sales of the company, therefore I cannot make such statements of my own personal knowledge.

Q. 26. What is your best impression on the subject?

(Obj. to.)

A. That no coal is sold by the company as Lackawanna coal, except that mined by or for it.

Q. 27. Has that always been the case?

A. I believe so.

Q. 28. What do you mean by the expression "mined for the company?"

A. I mean coal mined from lands not owned by the company, under contract, by which the whole product of such mines is taken out, prepared, and delivered to the company, under the supervision of its own engineer and superintendant.

Adjourned to 3 p. m., the 17th inst.

195 THURSDAY, *June 17th*, 1869.

Present, counsel for the respective parties.

X State whether or not in your previous examination in this cause, you profess to give the amount of coal purchased by the complainants from the Delaware, Lackawanna and Western Railroad Company, and the time when the same was purchased.

A. I do not recollect; I may have done so, but so much time has elapsed since my first examination, that I have lost all recollection on the subject.

X If the record shows that you did profess to give such information, whence did you derive it?

A. I really cannot say, at this date.

X Did you derive it from the books of the company?

A. I cannot tell; I have no doubt it was taken from the books of the company.

X By whom?

A. I can't recollect; probably by some one or more of the clerks.

X Under whose direction?

A. I really cannot say. I have probably asked for the informa-
196 tion, and it has been furnished. I have no doubt it was correctly stated at the time.

X To whom did you apply for that information?

A. I cannot say.

X To whom, in the office of the complainants, would you ordinarily apply for such information?

A. To the president; or in his absence to the vice-president, treasurer, or some other officer of the company.

X State whether or not your knowledge in regard to sales of coal by the complainanis during the last several years, is extensive and accurate.

A. As to its extent, I have charge of all sales of coal transported by the company upon its canal. As to its accuracy, I can only say that I know what is being done at the present time in the way of selling coal; my duties engrossing *to* much of my time and thoughts to allow me to charge my mind with the details of past transactions.

(The last sentence in answer obj. to as not responsive.)

X Have you had, since the commencement of this action, any other or more extensive means of obtaining informaion in regard to
197 the sale of the coal of complainants, either from the books, or the officers of the company, than you now possess?

A. I do not know that I have.

X Do you know of the complainants' coal ever having been sold under the name "Lackawanna coal," with any addition or qualification to that *time?*

A. Not to my knowledge.

X You have stated in your examination in this cause, that you caused to be published in the Providence papers, portions of a letter written to you by the defendant, on or about August 30th, 1866. Did you publish that letter by direction of complainants, or on your own motives?

A. It was published by the advice and approval of the president of the company.

J. C. HARTT.

Subscribed and sworn to before me this 17th June, 1869.

R. E. STILWELL,
Examiner, &c.

Adjourned to the 25th inst. at 2 p. m.

198

199 FRIDAY, *June 25th*, 1869.

Present, counsel as before.

CHARLES P. HARTT, called and sworn as a witness on the part of the defendant, deposes and says:

Q. 1. What is your *petition* in the office of the complainants?

A. Treasurer.

Q. 2. State whether or not, you are also acting secretary.

A. I am not.

Q. 3. Who is the secretary of the company?

A. R. H. Lodyne.

Q. 4. Have you produced the books called for in the subpœna served upon you?

A. I have not.

Q. 5. Why did you not produce them?

A. I could not, in the nature of the case. The books called for are not connected with my department. The subpœna called for "the books and papers containing entries for the purchase and sale of coal for the last two years." The books are not all in the New York office, I suppose, and having recently entered the employ of the company, I am not acquainted with the different books that are kept.

200 Q. 6. Under whose control are those books?

A. There are different officers of the company, and the purchase and sale of coal is connected more or less with the business of the different officers. J. C. Hartt is the sales agent in this city. M. T. Bennett is at the head of the harbor and yard department. There are several yards in the vicinity, where the books are kept and coal sold. I don't know the names of the parties who have charge of them.

Q. 7. Question repeated.

(Obj. to.)

A. The different sales agents sell coal.

Q. 8. Is there no officer of the company that has general charge of its books?

A. I have charge of the books of the office here, after the returns are made.

Q. 9. Are you able to state, or can you qualify yourself to state from an examination of the books of the company, or any of them, the number of tons of coal sold by the company during the last year, either at Roundout, or from their yards, the prices at which, and the parties to whom such sales were made.

(Obj. to as immaterial.)

201 A. I am not able now to state, but can, no doubt, after proper examination of the books, make such a statement.

(Counsel for defendants notifies the witness to prepare himself to answer the question at the next meeting.)

Q. 10. Are you able to state, or can you qualify yourself to state, the number of tons purchased by the company during the past year from other parties, and sold by them as Lackawanna coal; the dates at which such coal was purchased, and the parties from whom such coal was purchased?

(Obj. to as immaterial.)

A. I am not able to state anything about it; the books of the company, will, no doubt, show the purchasers of coal during the time mentioned.

Q. 11. In whose custody are those books?

A. Under the immediate charge of the different book-keepers of the company.

Q. 12. Under the general supervision of what officer of the company are those book-keepers?

A. Under my general supervision.

Q. 13. What was there to prevent you from producing those books here to-day; to prevent your doing so?

(Obj. to as having been asked and answered.)

202 A. As I answered before, I could not from the multiplicity of them, the interference with the business of the company, and I understood, too, that the books ought not to be brought from the office.

Q. 14. From whom did you understand that?

A. From our counsel, Mr. Bates.

Do I understand you that you refuse to produce those books here, or any of them, under the advice of Mr. Bates.

A. I cannot explain it any more than I have done.

Q. 16. Do you refuse to produce them?

A. I don't refuse to do anything that I am legally bound to do.

Q. 17. Do you feel yourself legally bound to produce those books? (Obj. to.)

A. With reference to all such matters, I should have to consult our attorney, and act according to instructions.

Q. 18. State whether or not your counsel has advised you not to produce those books?

A. No; he has not advised me not to produce them.

Q. 19. You have refused to produce them to-day, then, on your own responsibility?

203 A. Not exactly that; I have not refused to produce them.

Q. 20. Well, then, will you produce them at the next meeting?

A. The only way I can answer that is, that I would have to consult the officers of the company, and do what is my duty to do.

Q. 21. Will you state to-day whether you will, or will not, produce those books at the next meeting?

A. I do not see that I can answer the question different from what I have done.

Adjourned to the 1st September, at 2 p. m.

WEDNESDAY, *September 1st*, 1869.

Present, counsel as before.

Adjourned to the 6th inst., at 2 p. m.

MONDAY, *September* 6, 1869.

Present, counsel as before.

CHARLES P. HARTT'S examination continued:

Q. 22. Have you the books of the company here to day?

204 A. I have not.

Q. 23. Why have you not produced them?

A. I cannot do it.

Q. 24. For what reason?

A. I have been advised by our attorney that it is neither proper or legal.

X 25. Do you refuse to produce the books called for by the subpœna, served upon you in June, because you are advised by the counsel of the company that it is neither proper or legal that you should do so?

A. I do.

X 26. Question No. 9, of June 25th, repeated.

A. I cannot take the necessary time to prepare myself.

X 27. Is that the only answer that you have to make to that question?

A. I will only add to that answer that I am advised by our counsel that I cannot be legally required to make such preparation.

CHARLES P. HARTT.

Subscribed and sworn to before me this 6th September, 1869.

R. E. STILWELL,
Examiner, &c.

205 (Testimony of the above witness closed, subject to the right of defendant's counsel to recall him, should the court order the production of the books, or statements mentioned in the subpœna served upon him.)

Adjourned to the 14th inst., at 2 p. m.

TUESDAY, *September* 14*th*, 1869.

Present, counsel as before.

Adjourned to the 15th inst., at 2 p. m.

WEDNESDAY, *September* 15*th*, 1869.

Present, counsel as before.

Adjourned to the 17th inst., at 2 p. m.

FRIDAY, *September* 17, 1869.

Present, counsel as before.

Adjourned to the 22d inst., at 2 p. m.

WEDNESDAY, *September* 22*d*, 1869.

Present, counsel as before.

Adjourned to the 23d inst., at 2 p. m.

206 THURSDAY, *Sept.* 23*d*, 1869.

Present, counsel as before.

Adjourned to the 29th inst., at 2 p. m.

WEDNESDAY, *Sept.* 29*th*, 1869.

Present, counsel as before.

Adjourned to the 6th Oct., at 2 p. m.

207 WEDNESDAY, *October* 6*th*, 1869.

Present, counsel for respective parties.

THOMAS DICKSON, a witness produced by complainants, being duly sworn, testified:

Q. 1. What is your age, occupation, and residence?

A. I am 45 years of age; am president of the complainants; I reside at Scranton, Pennsylvania.

Q. 2. How long have you resided there?

A. Twelve years.

Q. 3. How long have you resided in the vicinity of the Lackawanna Valley?

A. I resided at Carbondale from 1836 to 1857.

Q. 4. Have you been acquainted with the business of mining coal in that region; and if so, how long?

A. I have since I was a boy; during the whole time of my residence there.

Q. 5. In what year did the complainants begin to mine and send to market anthracite coal?

A. I think in about 1829.

Q. 6. By what name did they sell their coal at that time?

A. I have no personal knowledge; I understand by the name of Lackawanna coal.

(Defendant's counsel objects to the answer as incompetent.)

208 Q. 7. Have they produced and sent to market and sold coal in every year since the year 1829?

A. They have since 1836, to my own knowledge.

Q. 8. By what name has it always been sold since that time?

A. I never knew any other name than Lackawanna for it.

Q. 9. At the time the complainants began to use this name, had it been adopted or used by any other company or person to designate their coal?

A. Not that I am aware of.

Q. 10. What other large companies besides the complainants, mine coal in the vicinity of the complainants' mines?

A. The Delaware, Lackawanna, and Western Railroad Company, the Pennsylvania Coal Company, and the Wilkesbarre Coal and Iron Company.

Q. 11. In what year did the Pennsylvania Coal Company commence to produce coal?

A. I think about 1850.

Q. 12. By what name do they sell their coal?

A. Pittston.

Q. 13. Did the complainants purchase from the Pennsylvania Coal Company the coal produced by that company during the first two years they mined coal?

A. I don't know that, from my personal knowledge?

209 Q. 14. When did the Pennsylvania Coal Company first apply the name Pittston to their product?

A. I suppose about 1853 or 1854.

Q. 15. In what year did the Delaware, Lackawanna, and Western Railroad Company begin to produce coal?

A. I think about 1854 or 1855.

Q. 16. By what name do they sell their coal?

A. Scranton.

Q. 17. Have these two companies ever, to your knowledge, sold their coal by any other name than Pittston, or Scranton?

A. No, sir; not to my knowledge.

Q. 18. Do either of these companies sell their coal by the name of Lackawanna coal?

(Objected to as leading, and not within the witness' knowledge.)

A. Not that I am aware of.

Q. 19. Do you know of the Miners' Journal, of Pottsville?

A. I do; the Miners' Journal, published at Pottsville.

Q. 20. At about what time was it established?

A. At an early day; I do not remember the time.

Q. 21. For many years during which it was published, were the complainants the only producers of coal in the Lackawanna Valley?

A. Yes, sir; they were the only producers and transporters; there were some individuals engaged in mining in a small way.

210 Q. 22. Do you know the Boston and Lackawanna Coal Company?

A. I do.

Q. 23. Does this company sell coal to other persons than the complainants?

A. They do not, unless to their employees. They are mining coal upon our lands.

Q. 24. Do they hold a lease from the complainants?

A. They are mining under suffrage, and pay us a royalty.

Q. 25. Do you know the Lackawanna Coal and Iron Company?

A. Yes, sir.

Q. 26. Does that company sell their coal as Lackawanna coal?

A. Not that I am aware of; they sell no coal but to their employees, and to the Delawarre, Lackawanna, and Western Railroad Co.

Q. 27. Do you know the Lackawanna Railroad Company?

A. There is no such company existing in the valley. There was in about 1854 to 1856 a company called the Lackawanna Coal & Railroad Company. They have been out of existence a long time.

Q. 28. Do you know the New York and Lackawanna Coal Company?

A. There is no such company doing business there now.

Q. 29. Do you know the Lackawanna and Susquehanna Coal & Iron Company?

211 A. Yes, sir; I think I do.

Q. 30. Do they sell their coal by the name of Lackawanna coal?

A. Not that I am aware of. Their coal now is passing over our road.

Q. 31. If any of these companies were publicly selling their coal by the name of Lackawanna coal, would you know it?

A. I think so.

Cross-exam'd:

Q. 32. What personal knowledge have you, as distinct from hearsay, as to the name or names under which the complainants have sold their coal to their customers since 1836?

A. I have lived in the valley during that whole time; been intimately acquainted with their managers, and had a pretty thorough knowledge of their business, particularly for the last ten or twelve years.

Q. 33. Have you any personal knowledge, and if so, what, as to the name under which they have sold their coal in New York City and in the New England States?

A. I have been connected with the co. since 1860, and during that time I know that their coal has been sold as Lackawanna, and nothing else. For that period I have had charge of their coal affairs—in

212 Pennsylvania, during the first four years as superintendant of the coal department, then general superintendent of the co., then vice-president, and in May last was elected pres't.

Q. 34. Do you know, of your own personal knowledge, that the name Lackawanna had not been applied to coal by any other parties before the complainants?

A. I do not; no, sir.

Q. 35. Did you ever hear of the coal of the complainants being designated by the term "Old Company's Lackawanna Coal?"

A. Not to my recollection.

Q. 36. State whether or not the coal produced by the complainants, the Del., Lack., and Western R. R. Co., and the Penn. Coal Co., is all mined in the same region or valley?

A. There are two valleys—one the Lackawanna and the other the Wyoming; the coal of the three companies is mined in those two valleys.

Q. 37. Does not each of the three companies own mines in either of the two valleys?

A. Yes, sir.

Q. 38. What are the names of the other large coal regions in the State of Pennsylvania?

213 A. The Schuylkill and Lehigh.

Q. 39. Is not all the coal coming from these two regions, respectively, known generally in the market as Schuylkill and as Lehigh coal?

A. Yes; there are different varieties, having local names.

Q. 40. Do you know personally that the Del., Lack. & Western R. R. Co. have never sold their coal in the market as and for Lackawanna coal?

A. I have never known or heard of any such sales. It is impossible for me to say what they may have done surreptitiously; they always advertize them as Scranton coals.

Q. 41. Do they not advertise their coal as Lackawanna coal coming from Scranton?

A. No, sir; they advertise it as Scranton coal coming from the Lackawanna Valley.

Q. 42. Have not the complainants, from time to time, issued circulars, warning their customers in substance from purchasing Lackawanna coal from other producers than themselves?

A. Not to my recollection; I have never seen one.

Q. 43. Have not the complainants sold coal produced by the Pennsylvannia Coal Co., as and for Lackawanna coal?

214 A. That I don't know. I know that they bought coal from the Pennsylvannia Coal Co. the first year the latter mined, but that was before my connection with the company; since I have been connected with the company, when they have bought Pittston, they have sold it as such.

Cross-examination suspended.

Adjourned.

FRIDAY, *October* 29, 1869.

Present, counsel as before.

Cross-examination continued:

X 44. Was the coal, which you say was bought from the Pittston Co., sold as Lackawanna coals by the plaintiffs?

215 A. Not that I am aware of; that was before I was connected with the company?

X 45. In the course of your examination you have spoken of Schuylkill coal and of Lehigh coal; do you apply those names respectively to coal of the Schuylkill and Lehigh valleys or regions, before, as well as after, mining?

A. Certainly.

X 46. Do you know from what source the name of Schuylkill and Lehigh, as applied to coal, are respectively obtained?

A. The general deposit of coal being located along those rivers and

in the regions known respectively as the Schuylkill aad Lehigh coal regions.

X 47. Look at the circular now shown you, and state whether it was not issued from the office of the plaintiffs?

A. Yes, sir; I suppose it was. It looks like one of ours.

(The above circular offered in evidence and marked.)

X 48. Are not Messrs. Quintard & Ward agents for the sale of your coal?

A. No, sir; we sell them coal.

X 49. Do you not allow them a commission on sales of coal effected by them?

216 A. No, sir. When large sales of coal are made to them, we allow them something off from our circular rates.

X 50. At what rate have you allowed these drawbacks?

A. That depends upon circumstances—10, 15 or 20 cents as the case may be.

X 51. The circular put in evidence is dated New York, 25 March, 1868. Did you sell coal, during the year 1868, at prices less than the prices stated in that circular?

A. I do not know, sir; I was not the sales agent.

X 52. Was any sales made under that circular?

A. I presume so.

X 53. With the drawbacks off?

A. That I don't know.

X 54. By the Pittston Company you mean the Pennsylvania Coal Co.?

A. Yes, sir.

X 55. You have stated in your examination that the Pennsylvania Coal Company commenced mining coal about the year 1850, and that about the year 1853 or 1854 they commenced calling their coal Pittston; what was it called from the time they commenced mining to the years 1853 or 1854?

217 A. I don't know.

X 56. Do you know what kind of coal it was?

A. Anthracite, from the Wyoming regions.

X 57. Was it not Lackawanna coal?

A. No, sir.

X 58. Do you know coal companies now or heretofore engaged in the production of coal of the following names, "The Boston and Lackawanna Coal Company," "Lackawanna Coal and Iron Company," "Lackawanna, Susquehanna Coal and Iron Company," "Lackawanna Coal and Railroad Company," and the New York and Lackawanna Coal Co.

A. I know that there have been, or are, such companies.

X 59. Have they not been, or are they not, engaged in mining coals from the coal region known as the Lackawanna coal region?

A. I would say not, as to the general question. The Boston and Lackawanna is located at Archibald, and they mining coal principally from lands owned by our company, and do now, and always have, sold us their entire product.

(Obj. to as not responsive.)

The Lackawanna Coal and Iron Company mine their coal at
218 Scranton, use their product, the majority of it; what they do not use they sell to the Delaware, Lackawanna & Western.

(Obj. to as not responsive.)

The Lackawanna, Susquehanna Coal and Iron Co. are located below Scranton, one of the tributaries generally of the Delaware, Lackawanna & Western.

(The same objection as before by defendants.)

The Lackawanna Coal and Railroad Company were located at Jessup about ten years ago, and were in existence about a year. I do not think there is any such company now in existence as the New York and Lackawanna Coal Co., or that they ever mined any coal.

X 60. You have stated that the Boston and Lackawanna Coal Company mine coal largely from the lands of the complainants. Do they also mine coal from other lands than the complainants'?

A. They do. A portion of their product comes from contiguous lands that were sold by the complainants.

X 61. Are not the complainants in the habit of buying coals largely from other producers than themselves, and selling it as they receive it from such producers?

219 A. They do buy coal from other producers, taking their entire product. They do not sell it as they receive it, as it is passed over their road to Honesdale, and there mixed with the general product of the company, rescreened as it passes into boats, and is then passed into the hands of customers.

X 62. Then the only alteration in the coal from the time it passes from the hands of the original producers to the time it is sold by the complainants is such as it undergoes in the screening process referred to in your last answer, is it not?

A. That and the mixture. The mixture gives our entire product uniformity. It only makes their coal assimilate to ours. If they were delivered seperately they would be different in character.

X 63. Does the mixture at all change the character of the coal received by you from other producers?

A. It changes it precisely as the mixing of dry and green wood, and the result would be about the same upon the coal.

X 64. Following out the comparison, would you call the pro-
220 duct of the other producers the dry or the green wood, as compared with yours?

A. As we purchase and produce both kinds, increased value is given to the entire product by the mixture; or in other words, neither of them would be as good alone as mixed.

X 65. Do or do not the Boston and Lackawanna Coal Company mine Lackawanna coal?

A. They mine coal upon the Lackawanna river.

(Obj. to.)

They do not mine Lackawanna coal.

X 66. Do not the complainants sell the coal received from that company as Lackawanna coal?

A. They sell the coal of that company as Lackawanna coal after it is made such by the mixing process at Honesdale.

X 67. Did they ever sell coal as Lackawanna produced by other producers without mixing it as you have described?

A. Not that I am aware of.

X 68. Then it is mixing what makes it what you call Lackawanna coal?

A. Yes, sir; mixing and general preparation. I mean the mixing, rehandling, rescreening, and reshipping. The coal is brought by railroad to Honesdale. There it is loaded into canal boats.

X 69. Describe this process of mixing.

221 A. We dump from the cars upon pile and in pockets, and from the pockets, through screens, into boats.

X 70. You have spoken in the course of your examination of the

Miners' Journal, printed at Pottsville, Penn. Is not that a leading paper, and one of the oldest mining journals in this country?

A. I believe it is.

X 71. You are familiar with the general appearance of that publication, are you not?

A. Yes, sir.

X 72. Look at the six papers now shown you purporting to be issues of that paper, and state if they are not such issues.

A. They have that appearance. I have no doubt but what they are such issues.

(Offered in evidence, it being agreed between counsel for the respective parties that counsel for the respondent will cut from the papers in evidence the portions of each paper relied upon to be included
222 in the minutes, and identified by the examiner. It is admitted that the three maps, respectively marked as follows: Respondent's Exhibits 2, 3, & 4, Oct. 29, 1869, contain in the main the general outlines of the coal regions therein respectively laid down, and are in the main correct.)

X 73. Do not the complain'ts take and regularly subscribe for the Mining Journal above referred to, and also the United States Railroad and Mining Register, published in Philadelphia, and have they not so taken them for a number of years last past?

A. I presume they come.

Direct resumed:

Q. 74. How long a time elapsed after the complainants began mining and sending coal to market before any other company commenced mining in the same region—in the Lackawanna and Wyoming regions?

A. We were the first producers and sellers of coal—about 20 years before any other company commenced mining. The company that followed us in mining was the Pennsylvania Coal Co.

123 Q. 75. Was your company during this 20 years substantially the only miners, transporters, and sellers of coal in that region?

A. It was.

Q. 76. When did the Delaware, Lackawanna, and Western Railroad Co. first begin to sell their coal at auction?

A. I think it was in the winter of 1858.

Q. 77. Is there any other company in the Wyoming and Lackawanna regions preparing its coal for market the same way as your company does, to ensure uniformity?

A. There is no other company to my knoweledge who mixes their product as thoroughly as we do.

Q. 78. As to coals coming from Lehigh region, do they generally have distinctive names, and is the word Lehigh added to these names to designate them?

A. They have distinctive names. I don't know that the word Lehigh is added to them. I have never seen it.

Q. 79. Did the complainants, in November, 1868, sell the coals mentioned in defendant's Exhibit No. 1 of this date for a very much
224 larger price than in that exhibit named, and, if so, how much larger?

A. They did. There was an advance of two or three dollars a ton.

Q. 80. Please explain how this circular, Exhibit No. 1, was issued.

A. In 1868 the majority of our coal was contracted for at prices rising through the season, and in order to induce our customers to take their coal early, and save us the expense of storing, our early circulars were

at low rates, with an advance for each month during the season; those taking the coal at the low circular contracting to take through the season.

Cross resumed:

X 81. Did all the purchasers of coal at the rates contained in Ex. 1 of this date contract to take coal every month during the shipping season at the current rates of such month?

A. Yes, sir; so far as my knowledge goes.

X 82. Have you knowledge that such is the fact?

A. I can only say in reply to that, that such were the instructions to the sales agents. I do not sell the coal.

225 X 83. Who gave those instructions?

A. They came from the president of the company. I think I was acting president of the company at the time; at least I had knowledge of the fact.

X 84. Am I correct in understanding that you mean to be understood as saying that you made no sales of coal, during the year 1868, at the rates referred to in Exhibit No. 1 of this date, except to parties who were then under contract to take coal subsequently from the complainants at enhanced prices?

A. I have already replied to that in substance—not to my knowledge.

X 85. Are you familiar with the processes applied by all other producers for mixing coals?

A. I am so far as the Wyoming and Lackawanna regions are concerned.

X 86. In what respect are the processes employed by the Delaware, Lackawanna and Western Railroad Co. different, in mixing their coals, from the complainants'?

A. Theirs leave' the mines in trains from one to two hundred tons, is passed to their shipping port, and dumped directly into vessels

226 over screen-bars, while ours, being a gravity road with inclined planes, we can raise but five cars at a time. Our cars necessarily become thoroughly mixed. We pile coal in large quantities during the winter, promiscuously, which is incorporated with our summer's product, while they, having a winter communication, pile but little, if any, coal elsewhere than at Elizabethport.

X 87. Do you not know, as matter of fact, that the Delaware, Lackawanna and Western Railroad Company pile large quantities of coal at times?

A. As compared with ours, they do not; as we have been compelled to pile our entire winter product.

X 88. Do you pile your summer coal?

A. Only at tide-water and in case of accident on canal. The same, ordinarily, as the Delaware, Lackawanna and Western.

X 89. Does it not injuriously effect the sale of the coal to have it exposed to the weather in large piles?

A. It affects its appearance, but not the sale.

X 90. What advantage is there then in covering coal?

227 A. Only to keep the snow and ice out—as it is difficult to handle it.

X 91. Do you cover your coal at Honesdale?

A. No, sir; we do cover at our retail yards.

X 92. Do you not know, as matter of fact, that coal coming from the Lehigh and Schuylkill regions *are* generally advertised as and sold for Lehigh and Schuylkill coal throughout this entire country, and has it not been so for a great many years?

A. I have never known them sold in any other way than by their distinctive name, it being understood by both purchaser and producer that they are from the Schoolkill or Lehigh region, as the case may be. The Lehigh Coal and Navigation Company sell the product of *of* its mines as Lehigh coal.

X 93. How long has the Lackawanna coal region been known by that name?

A. That is farther back than I can go. I have lived there for over 30 years. The region had been known as such before I was born.

THO'S DICKSON.

Subscribed and sworn to before me this 29th Oct., 1869.

R. E. STILWELL,
Examiner, &c.

228 Adjourned to the 30th, 1869.

SATURDAY, *October 30th*, 1869.

Present, counsel, as before.

Counsel for complainants puts in evidence a copy of an advertisement of the Delaware, Lackawanna, and Western Railroad, dated February 16, 1863, published in the New York Evening Post of February 24, 1863, which is marked [compl'ts'] *defendant's* Exhibit L.

Also, an similar advertisement, dated September 19, 1866, published in the same paper Sept. 25, 1866, and which is marked Ex. M.

Also, a circular of the same company, dated September 21st, 1869, which is marked Ex. N.

Also, the following advertisement of the same company, pub-
229 lished in the New York Daily Times of October 27, 1869.

"*John H. Draper & Co., auctioneers.*

"The Delaware, Lackawanna and Western Railroad Company will sell at auction on Wednesday, Oct. 27, inst., at 12 o'clock, noon, at No. 26 Exchange Place, 70,000 tons Scranton coal from the Lackawanna Valley, deliverable during the month of November, 1869.

"SAMUEL SLOAN,
"*President.*"

Complainants rest.

230

231 U. S. circuit court.

THE PRESIDENT, MANAGERS, AND COMPANY of the Delaware and Hudson Canal Company
vs.
HENRY C. CLARK.

EX. A.

OFFICE OF THE DELAWARE & HUDSON CANAL COMPANY,
NO. 7 NASSAU STREET,
New York, 21st August, 1866.

Mr. HENRY C. CLARK,
Cor. Dorrance & Dyer streets, Providence, R. I.

SIR: I have before me a printed advertizement, cut from one of the newspapers published in your city, which reads as follows:

"*Coal.*

"Lackawanna, lump, and chestnut coal, for steam purposes, by the cargo or otherwise, by

"HENRY C. CLARK,
"*Corner Dorrance & Dyer Street.*"

This advertizement evidently means that you have "Lackawanna" coal for sale.

As we are the only producers of that variety, and you have never, to my knowledge, bought any from us, it has occurred to me that possibly you may have been imposed upon by designing individuals, who
232 have sold you an inferior article, instead of the genuine.

I take the liberty, therefore, (although a stranger,) of asking you to furnish me the names of parties who have sold you the article you are now offering to the public as "Lackawanna" coal.

If any fraud has been committed you should know it, and can know it, immediately, if you desire.

If any persons are selling you an inferior article under the name of "Lackawanna" coal, it is due alike to yourself, your customers, this company, and the trade generally, that they should be exposed.

Awaiting your reply, I remain,
Yours, very truly,

J. C. HARTT,
Sales Agent.

EX. B.

PROVIDENCE, *Aug.* 23, 1866.

J. C. HARTT, Esq.:

By your letter I think I understand your motives, and the parties moving you in this matter. That the parties here are so engaged, is natural; but that you, holding the position you do, should so lend yourself as a sort of puppet in such business, is surprizing.

I am not responsible for your ignorance of my purchases. Had you attended to your own affairs, examining your books, instead of wasting your time on me, you would have found large sales on my account.
233 Having been selling Lackawanna coal some 27 years, I think I am as competent to judge of the article as yourself, and when I want your protection from "designing individuals" I will ask it.

Possibly I may be doing you injustice in my suspicions, and you do really wish justice to all parties; if so, I shall expect a circular from your company reading somewhat in this wise:

Whereas for years our customers and the public were "imposed upon by designing individuals," in the form of our agents, "who have sold an inferior article" of coal, called Pittston coal, "instead of the genuine," therefore, wishing to make amends for the "fraud," we propose to refund 50 cents per ton, or a satisfactory sum, to the parties thus defrauded.

(Signed) D. & H. C. CO.

Awaiting a dividend as above, being one of the defrauded ones, I remain, yours,

H. C. CLARK.

EX. C.

OFFICE OF THE DELAWARE & HUDSON CANAL CO.,
No. 7 NASSAU STREET,
New York, 30th August, 1866.

Mr. HENRY C. CLARK,
Providence, R. I.

SIR: Your exceedingly cautious letter of the 23d has been received, and I notice you are particularly careful not to answer the inquiries contained in mine of the 21st.

234 You intimate, but do not, for some reason, openly assert that you have bought our coal this season; but do not say from whom. If this is really so, and the article you are selling is genuine, you must have bought it second-hand from some one of our customers; because you certainly have not in years bought directly from the company. If then your intimation means anything, it means that the "Lackawanna" coal you are so loudly advertizing and offering to sell to the public has been actually purchased from some one or more of our customers.

Again I ask you to name those parties. Until you do so, we shall be compelled to regard you as being the principle, if not the only party, to a deception which is being practised upon the people of your vicinity, and by which it is intended to deprive this company and its customers of a portion of their just rights.

If your experience of twenty-seven years in the coal trade has taught you anything, it has taught you that Lackawanna coal is an article produced by this company alone. That is the trade name by which our coal has been, for nearly forty years past, known and recognized among all honest dealers in the trade and throughout the whole country. Consumers wanting our coal ask for "Lackawanna," and those buying "Lackawanna" coal expect to get the article furnished or produced by this company. That name is the property of this company, acquired by long-continued use. As property it is recognized by the courts of

235 the land, and as such our rights to it and rights in it are entitled to, and will receive, the protection of the laws. Is it to be supposed that rights thus established and defined are to be invaded by dishonest and unscrupulous persons and destroyed with impunity? We think not. At all events, we intend to make use of every proper means to protect ourselves and our customers in the enjoyment of them.

I shall wait a reasonable time for your reply, and if, when it comes, it is satisfactory, I shall be very glad; if otherwise, I shall feel bound to take such steps on behalf of the company as the necessity of the case may seem to require.

Have the goodness, in replying, to abstain from offering offensive and sarcastic recommendations, such as characterized your former production. As a matter of taste, it is better to leave them out.

Yours, very truly,

J. C. HARTT,
Sales Agent.

EX. D.

OFFICE OF HENRY C. CLARK, DEALER IN
ANTHRACITE AND BITUMINOUS COALS,
Corner Dorrance & Dyer streets, Providence, Aug't 31, 1866.

Mr. J. C. HART.

D'R SIR: People generally do not misunderstand me, and you shall

not. I will try to make matters so clear that a conceited mind
236 may understand them, so also, so explicit that you will not waste a week or spoil 3 sides of a letter in getting up an answer.

I did not for one moment intend to be understood as buying coal of your co. this year. On the contrary, have not bo't any, to my knowledge, for several years, of any party.

I sell Scranton, Pittston, or any other coal coming from the Lack'a regions as Lack'a coal, and shall continue to do so until stopped by other authority than yours; and to make my position as clear as possible, I attach my this morning's advertizement, and say I do not intend to sell a pound of your coal as under that advertisement, but Scranton mostly.

Your remarks about "dishonest and unscrupulous persons, frauds, deception, &c.," are on a par with your presumption. They meanly imply charges you have not courage to make, and are no honor to you, the co. you represent, nor good breeding generally, and for you, after such remarks, to school me in a matter of "taste" in letter-writing, comes with an ill grace.

Trusting you understand me, I rem., &c.,

H. C. CLARK.

Copy advertisement enclosed in the above.

"Lackawanna coal, 5,000 tons, lump, broken, and other sizes, for sale low by

"HENRY C. CLARK."

237 OFFICE OF THE DELAWARE & HUDSON CANAL COMPANY,
No. 7 Nassau street, New York, 4 Sept., 1866.

Mr. HENRY C. CLARK, *Providence.*

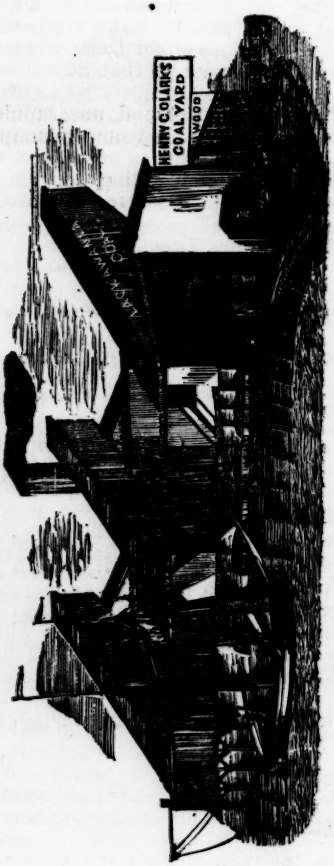
SIR: I have received your letter of the 31st, and am delighted with its candour. The unblushing impudence with which you parade your dishonest acts and intentions is certainly refreshing. And now, to be equally explicit, I will say that I intend to make use of that letter, with its disgraceful admissions, in such manner as will, I think, best serve the interests of the company I represent; and at the same time be likely to place you in your true character before the community in which you live.

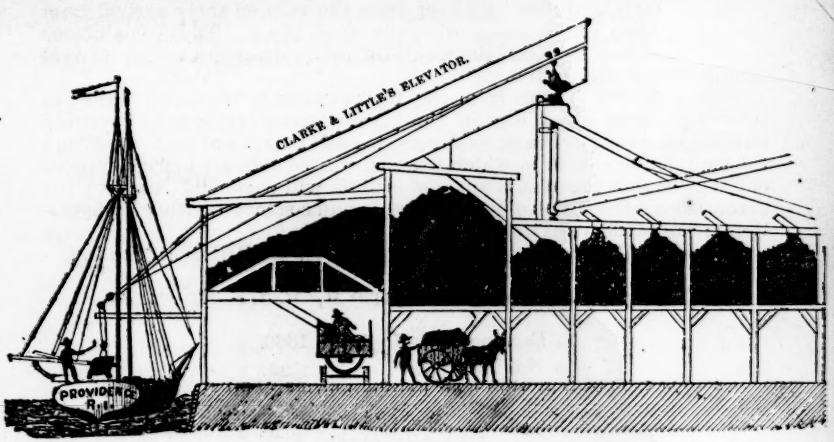
Having no desire to correspond any further with you, I remain, yours, &c.

J. C. HARTT,
Sales Agent.

EX. Z.

A picture of the defendant's coal-yard.





[COMPL'TS'] *Defendant's* EXHIBIT "L," R. J. S.

238 *Evening Post, Feb'y* 24, 1863.

Scranton coal at auction.

OFFICE OF THE DEL., LACK.
& WESTERN RAILROAD COMPANY,
35 *William street, N. Y., Feb.* 16, 1863.

The miners having resumed work, the sale of coal at public auction, announced by the board of managers for the 23d day of December, 1862, will take place on Wednesday, the 25th February, 1863, at 12 o'clock m., at the room now used as the Merchants' Exchange, No. 26 & 28 Exchange Place, cor. William street, Simeon Draper, auctioneer, at which time and place they offer for sale thirty thousand tons fresh-mined Scranton coal, embracing all the usual sizes, and deliverable at their depot, Elizabethport, N. J., after the 1st of March next. They will repeat such auction sale on or about the 20th of each month during the year 1863.

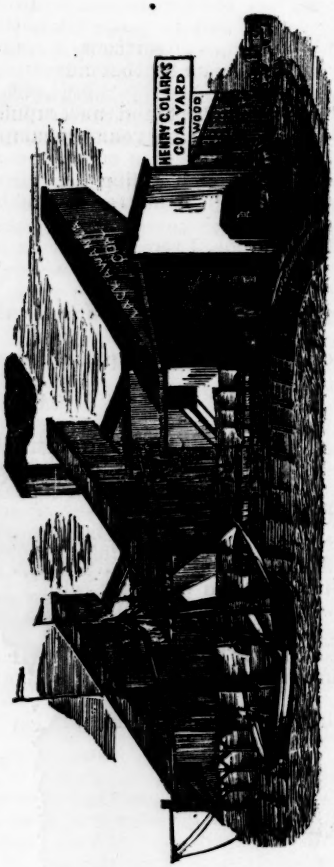
The sale will be positive. Each lot put up will be sold to the highest bidder, no bids in any form whatever being made for account of or on behalf of the company.

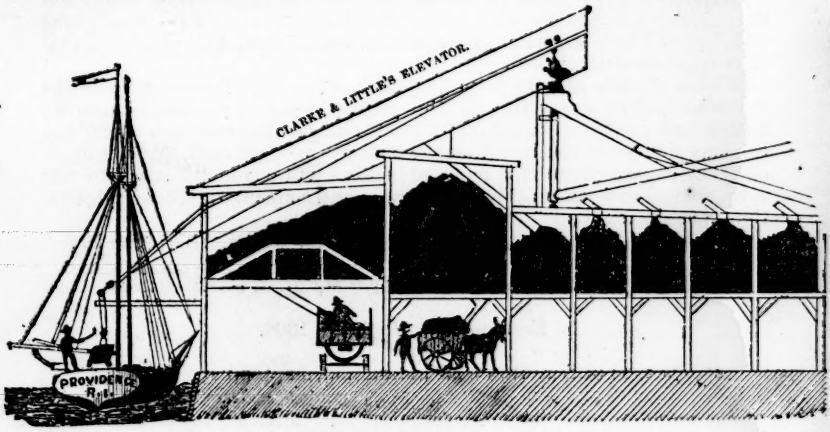
Fifty cents per ton in bankable funds to be paid at the time and place of sale, and the balance in like funds on receiving the order for the coal, which must be called for within ten days thereafter, and the coal taken away within thirty days from the day of sale, unless navigation be obstructed. Buyers who wish, however, can have an additional thirty days for taking the delivery of their purchases, by making a further deposit of 50 cents per ton within the ten days
239 above specified. Interest at 7 per cent. per annum will, in such case, be charged on the balance from the time stipulated for payment and until paid, and twenty-five cents per ton to cover the expense of stocking the coal, both to be paid on delivery of order.

The other conditions of sale will be substantially those hitherto accepted by all purchasers by private contract of coal deliverable at Elizabethport, so far as applicable.

EX. Z.

A picture of the defendant's coal-yard.





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The sale will be positive. Each lot put up will be sold to the highest bidder, no bids in any form whatever being made for account of or on behalf of the company.

Fifty cents per ton in bankable funds to be paid at the time and place of sale, and the balance in like funds on receiving the order for the coal, which must be called for within ten days thereafter, and the coal taken away within thirty days from the day of sale, unless navigation be obstructed. Buyers who wish, however, can have an additional thirty days for taking the delivery of their purchases, by making a further deposit of 50 cents per ton within the ten days
239 above specified. Interest at 7 per cent. per annum will, in such case, be charged on the balance from the time stipulated for payment and until paid, and twenty-five cents per ton to cover the expense of stocking the coal, both to be paid on delivery of order.

The other conditions of sale will be substantially those hitherto accepted by all purchasers by private contract of coal deliverable at Elizabethport, so far as applicable.

The coal will be delivered direct from the cars on their arrival from the mines when practicable; otherwise from stock. Those conditions will be modified to meet the wants of ocean steamers whose arrival cannot be definitely fixed.

With a reliable avenue from the Lackawanna & Wyoming Valley to tide-water, open every day in the year, (Sunday excepted,) requiring but 12 hours for the transit of trains, the advantages of such sales, and the superior condition in which the coal will be delivered, are so apparent they cannot doubt this mode of selling will commend itself to the favorable consideration of both the trade and consumers, whose coöperation is respectfully invited.

C. R. ROBERTS, *President.*

[COMPL'TS'] *Defendant's* EXHIBIT "M," R. J. S, EXAMINER.

Evening Post, Sept'r 25, 1866.

40,000 tons of Scranton coal at auction, September 26th, 1866.

N. Y., Sept'r 19, 1866.

The Delaware, Lackawanna & Western Railroad Company will
240 hold their forty-second auction sale of coal on Wednesday, the 26th day of September, 1866, at 12 o'clock m., at their new salesrooms, 26 Exchange Place, corner of William street, New York, at which time they will sell, by Messrs. John H. Draper & Co., auctioneers, 40,000 tons of fresh-mined coal, from the Lackawanna regions, of the usual sizes, delivered at their depot, Elizabethport, N. J., during the month of October next.

The conditions will be fully made known at the time of sale.

TERMS.—Fifty cents per ton payable in current funds on the day of sale, and the balance within ten days thereafter, at the office of the company.

JOHN BRISBIN, *President.*

Ex. "N."

75th auction sale; 90,000 tons Scranton coal on Wednesday, September 29th, 1869.

NEW YORK, *Sept.* 21, 1869.

The Delaware, Lackawanna and Western Railroad Company will sell, by Messrs. John H. Draper & Co., auctioneers, at the company's salesroom, 26 Exchange Place, corner of William street, New York, on Wednesday, September 29th, at 12 o'clock noon, 90,000 tons of coal from the Lackawanna regions of the usual sizes deliverable at their depot, Elizabethport, N. J., during the month of October, 1869.

The sale will be positive. Each lot put up will be sold to the highest bidder; no bids in any form whatever being made for account of, or on behalf of, the company. The conditions will be fully made known at the time of sale.

241 TERMS.—Fifty cents per ton, payable in current funds on the day of sale, and the balance within ten days thereafter, if required, at the office of the company.

SAMUEL SLOAN, *President.*

(Endorsed:) U. S. circuit court. The President, &c., of the Delaware & Hudson Canal Co. vs. Henry C. Clark. Complainants' exhibits. Owen, Nash & Gray, compl'ts' att'ys.

242

243 SATURDAY, *October* 30, 1869.

Present, counsel as before.

HENRY C. CLARK, recalled on the part of the defendant, deposes and says:

Q. 1. How long have you known Mr. E. A. Quintard?

A. About 12 years.

Q. 2. What was his business when you first became acquainted with him?

A. Coal agent; and shortly after he went with the Delaware, Lackawanna and Western Railroad Company as their coal sales agent and vice-president.

Q. 3. Did you purchase coal from him, *as such agent* for a number of of years, as such agent of said company?

A. I did.

Q. 4. What description did he give to you of the coal purchased by you from that company through him?

A. He told me it was Lackawanna coal, and to sell it as such.

Q. 5. What effect upon the saleability of coal, does exposure to the weather without cover, have?

244 A. It makes it dirty, dull looking, rusty, and more unsaleable than fresh-mined coal.

Q. 6. Are you acquainted with two mining journals, named respectively as the Miners' Journal, published at Pottsville, Pa., and the United States Railroad and Mining Register, published at Philadelphia? If so, how long have you so known them, and are they not the leading mining journals in this country?

A. They are the leading mining journals in the country. I am acquainted with them, and have known the Miners' Journal, at Pottsville, nearly as long as I have been in the business. The United States Railroad and Mining Register I have known for three or four years.

(It is admitted that the printed slips, pasted upon the four sheets, now produced, and marked as follows, Respondant's Exhibits 1, 2, 3, & 4, October 30, 1869, are cut from the regular issues of the two papers above referred to, respectively, except those pasted on the third column of Exhibit No. 3.

245 The respondents also offer in evidence, printed slips contained in said column, Exhibit No. 3, taken respectively from the New York Evening Telegram, Saward's Coal Freight Circular, and the New York Daily Tribune.)

Q. 7. What is this Saward's Coal Freight Circular?

A. It is a printed circular sent to me in the coal interest.

Q. 8. Are the two circulars now produced, printed circulars issued by you in your business?

A. Yes, sir.

(Obj. to as incompetent.)

(The two circulars are offered in evidence, and are marked Defendant's Exhibits 5 & 6, October 30, 1869. R. E. S., examiner.)

Q. 9. Is Mr. Samuel Bonner a large dealer of coal in this city?

A. He is.

Q. 10. Is the pamphlet now produced the pamphlet issued by him in his business?

(Obj. to.)

A. It is.

(Offered in evidence and marked Resp'd't's Ex. 7, Oct. 30, 1869.)

(Obj. to.)

246 Q. 11. Are you acquainted with a publication by Messrs. Daddon & Bannen, called Coal, Iron and Oil, or The Practical American Miner?

A. I am.

Q. 12. Is it a recognized standard treatise on the subjects discussed in it?

A. It is.

Q. 13. Are you acquainted with a work known as the History of the Lackawanna Valley, by H. Hollister, M. D.; if so, is it a standard history of that valley?

A. There are two editions of the same work by that author and each of them are standard editions of that valley.

Q. 14. Are you also acquainted with a work known as the History of Wyoming, by Charles Minot, and is that also a standard work?

A. It is.

Q. 15. Are you also acquainted with a work known as Chapman's Sketch of the History of Wyoming, and is that also a standard work?

A. I am; and it is.

Q. 16. Are you also acquainted with a work known as Wyoming, its History, Romantic Adventures, &c., by George Peck, D. D., and is that also a standard work?

A. I am; and it is.

247 Q. 17. Are you also acquainted with a work known as Early Methodism within the bounds of the Old German Conferences, from 1788 to 1828, by George Peck, D. D., and is that also a standard work?

A. I am; and it is.

Cross-examined by Mr. Bates.

X 18. In what year did you purchase the coal from E. A. Quintard, which he told you was Lackawanna coal?

A. The first year that he was there, and during all the time he was there.

X 19. What was the first year he was there?

A. As nigh as I can recollect, 10 or 12 years ago.

X 20. In what year did the Delaware, Lackawanna and Western Railroad commence to sell their coal at public auction?

A. I could not tell.

X 21. Did you purchase the coal referred to by you of Mr. Quintard at private sale?

A. The most, if not all, was purchased at private sale.

X 22. Was the coal so purchased by you of Quintard, Scranton coal?

A. It was Scranton coal from the Lackawanna Valley, desig-

248 nated Scranton in order to distinguish it from other coals mined in the valley.

X 23. Did Quintard so tell you at the time?

A. He told me it was Lackawanna coal. I don't know *or* remember whether the term Scranton was given to it by him to designate it from

the other coal or not. The president, Mr. Brisbane, and the other officers said to me that was the reason they gave it the name of Scranton.

X 24. Do you know from whom the Miners' Journal, of Pottsville, and the Mining Register, of Philadelphia, obtain their information.

A. No more than from what the papers themselves say.

HENRY C. CLARK.

Subscribed and sworn to before me this 30th October, 1869.

E. E. STILLWELL,
Examiner, &c.

Defendant's testimony closed.

249 EXHIBIT No. 1.—*Miners' Journal, Pottsville, Pa., Saturday, July* 11, 1868.

	1867.		1868.		
	Week.	Total.	Week.	Total.	Inc. & dec.
P. & R. R. R.	61,233	1,666,455	35,698	1,673,284	7,125
Schuyl. Ca.	26,410	453,735	17,700	471,376	17,641
L. Val. R. R.	38,181	999,260	42,418	1,265,567	266,307
Lehigh Ca.	27,602	325,804	35,298	353,188	27,384
L. Nav. R. R.			*7,113	192,577	192,577
Scrant., s'th	23,458	641,556	17,937	546,199	d. 95,357
" n'th	8,834	201,576	12,813	240,765	39,189
Penn. C. C.:					
By R. R.	17,354	376,384	17,802	422,819	46,435
By canal	1,183	8,230	1,068	10,980	2,750
Del. & Hud.	34,125	533,842	40,259	580,884	47,042
Wy'ng, s'th.		65,355	4,718	81,718	16,363
Wy'ng, n'th				2,780	2,780
Shamokin	10,772	235,560	12,231	234,382	d. 1,178
Trevorton	1,524	21,184	661	9,669	d. 11,515
Short M't.	9,122	32,381	2,966	50,160	17,718
L. V. Co.	2,086	28,577	1,995	39,215	10,638
W'm'ston	3,713	45,515	4,384	76,437	29,923
Br'd Top	4,108	119,336	4,056	119,047	d. 289
	262,706	5,754,750	259,117	6,369,987	
	259,117			5,754,750	
	2,589			615,237	

* Coal transported over Lehigh Coal and Navigation Company's that did Road not enter the canal.

Of the increase of 615,237 tons this year, so far, the Schuylkill regions have furnished—

250 An increase of ..... 24,766 tons
Lehigh ..... 485,268 "
Lackawanna ..... 59,186 "

569,216 "

The balance of the increase is from the Williamston and Lykens Valley regions.

JOSEPH F. DEAN & Co.,

Sole shippers of the Mineral Spring Coal Co., Baltimore Vein Wilkesbarre coal from the Lackawanna region; also, Sugar Creek Lehigh coal, especially adapted to smelting iron and foundry purposes.
Piers 4 and 9 Elizabethport, N. J.; 43 Trinity Buildings, N. Y.
Boston office, 23 Doane street.
March 28, '68. 13-6m*

LEWIS AUDENREID & Co.,

Miners and shippers of coal,

Lehigh, Springt. M't' & Wilkesbarre, Locust, Dale, & Merriam, Locust M't', Greenback, Shamokin, Tremont, Lorberry, Wolf Creek, Diamond & Star, Red Ash, Plank Ridge, Shenandoah, White do., George Creek & Broad Top.

Offices: 205 Walnut street, Philadelphia; 110 Broadway, New York; 14 Kilby street, Boston; 31 South street, Baltimore; 33 Westminster street, Providence. Shipping wharves, P't Richmond, P't Johnston, Jersey City, Baltimore.

LEWIS AUDENREID. GEORGE H. POTTS.
W'M G. AUDENREID. ADDISON CHILD.
FREDERICK A. POTTS.

MARCH 21, '68, 12

Miners' Journal, Pottsville, Pa., Saturday, February 20, 1869.

C. E. DETMOLD. JAMES S. COX.

DETMOLD & COX.

For the sale of the celebrated Room Run (Lehigh) coal, recently mined by the Messrs. Packer, under leases from the Lehigh Coal and Navigation Co., but now by the company themselves, who design making their improvements in the preparation of the coal this year.

Orders received from foundrymen, manufacturers, and the trade.

Offices: 38, 40, & 42 Trinity Building, New York, (temporarily at No. 71 Broadway.) Address, by mail, P. O. Box No. 4624.

Also, Old Company's Lehigh, Spring Mountain Lehigh, and George Creek Cumberland coals. Agents for Swoyer's very superior Wilkesbarre steam and family coals from the Enterprising mines.

JAN. 2, '69. 1—

Pier No. 14.

BORDA, KELLER & NUTTING,

Wholesale dealers in best varieties of anthracite & bituminous coal.

Offices: 327 Walnut street, Philadelphia; 42½ Kilby street, Boston; room, 64 Trinity Buildings, New York.

Sole agents for West Lehigh Greenwood coal and Garrotson's Girard coal. George Creek, bituminous, on board at Baltimore or Georgetown.

JAN'Y 1, '68. 1—

JOHN ROMMEL, JR.,

Sole agent for Hill & Harris White Ash, Daniel Webster R. Ash, Franklin coal of Lykens Valley; Red Ash, Silver Run Free Burning, and Oakdale Pink Ash coals; pier 17 P't Richmond, Philad'a. George's Creek Cumberland & Broad Top, Raven's Wing, & Hazelton Lehigh, pier No. 2, Elizabethport, N. J.

Offices: 2051–2 Walnut street Philad'a; room, 45, No. 71 Broadway, N. Y.; 21 Doane street, Boston.

J. C. MOODY, *General Agent.*

JAN. 1, '68. 1-ly

253 *Miners' Journal, Pottsville, Pa., Saturday, May 22, 1869.*

The coal companies in the Lackawanna portion of the Wyoming coa region, with their extra privileges, feel that they have advantages over all individual operators, and the other coal regions. This is the truth; and these advantages will continue so long as the Schuylkill region has no direct outlet to the bay of New York. If Schuylkill County interests are willing to remain quiet without making any effort to relieve themselves from this disadvantage, they must submit to the consequences.

Since this was written, we find a much fairer article on the trade in the Scranton Republican of Wednesday, which admits all that we have said elsewhere, in the following extract, for which we have only room this week; otherwise we would publish the whole article:

"In the Schuylkill region, mining is done by individual operators, or small firms or companies, owning, generally, one mine, and sending their coal to market by the Reading Railroad or canal. The Reading Railroad is owned mainly by foreign capitalists, whose policy does not comprehend fostering coal production, but only squeezing as
254 much profit out of it as possible. Tolls are high, and the railroad gets the lion's share of the profits of the trade. In the Lackawanna region, the great bulk of the coal is dug by large companies, who own many mines, and also the lines of railroad or canal by which their product reach a market. They can afford to sell coal at low prices, for if they do not make a profit on the mining they will on the transportation. It does not need any declaration from these companies to show that their policy is large sales at small profits. They can profitably sell coal at a figure which would bring only loss on the individual operator of Schuylkill. They have for some years pursued this policy. They have increased their production enormously, and they have sold at low rates. They have virtually driven Schuylkill out of the New York market—the great coal market of the country. Schuylkill lost her prestige, her commanding position, two or three years ago, and has ever since been trying to regain it, and, as we believe, by foul means as well as fair. She has for two winters sought to induce the legislature to lay a heavy tax on coal mined by the Lackawanna companies, and succeeded in making them pay a tax of four cents a ton, which is not paid on Schuylkill coal. She stirred up the eight-
255 hour strike last year. Her operators have furnished the money to keep the suspension movement alive, and we suspect even first whispered the suggestion into the ears of the miners. Since '65, no considerable strike or disturbance of the coal trade has originated in the Lackawanna region. Repeated attempts have been made by the importation of emissaries from Schuylkill to cause trouble here, but they have always failed, and we believe the next attempt will meet with less encouragement than any of its predecessors. Our workingmen are getting their eyes fully opened to the use Schuylkill operators would make of them.

The Pottsville Journal charges Luzerne County operators with proposing an arrangement by which the production of the different companies should be limited, and the market kept clean enough of coal to ensure high prices this season. After the failure of this proposition, refusing to embrace the Schuylkill substitute, to wit, suspension, and "overawing the miners, and thus preventing suspension becoming general."

256 Respondent's Exhibit No. 1, Oct. 30, 1869. R. E. S. Examiner, &c.

257 EXHIBIT No. 2—*Miners' Journal, Pottsville, Pa., Saturday, November* 23, 1867.

	1866.		1867.		
	Week.	Total.	Week.	Total.	Inc. & dec.
P. & R. R. R.	60,505	3,359,143	69,394	3,011,016	d. 348,127
Schuy'l Ca.	32,717	1,231,570	32,183	951,760	d. 279,811
L. Val. R. R.	34,378	1,670,992	46,545	1,856,521	175,527
Lehigh Ca.	22,742	1,003,788	30,010	936,404	d. 67,369
Scranton, s'th	23,173	951,879	23,179	1,101,129	149,270
" n'th	9,770	383,408	13,992	438,468	55,039
Penn. C. C.:					
By R. R.	18,173	426,723	.....	727,597	300,814
By canal	824	94,784	475	21,053	3,731
Del. & Hud.	29,375	1,220,019	41,574	1,266,187	46,168
Wy'ng, s'th	.....	438,062	.....	344,846	93,216
Do. n'th	.....	97,108	.....	61,265	35,443
Shamokin	17,512	503,563	12,440	429,586	78,977
Trevorton	925	47,891	1,694	40,606	7,285
Short M't.	3,870	99,673	3,491	74,127	25,546
L. V. Co.	.....	36,262	2,192	63,071	26,808
W'ms'ton	2,426	59,551	4,667	107,348	47,498
Red Top	4,550	243,396	5,655	211,272	32,114
	240,956	11,798 158	287 361	11,622,256	
	.....	11,622,256	240 956	.....	
	.....	164,602	46,405	.....	

No return received from the Pennsylvania Coal Company this week. This would increase the weekly shipments upwards of 20,000 tons
258 which shows a large increase over the corresponding week last year.

A glance at the above table will exhibit the following result of the coal trade so far this year:

	Loss 1867. Tons.	Gain 1867. Tons.
Schuylkill Railroad	348,147	
" Canal	279,811	
Lehigh R. R. & Canal		108,160
Lack. & Wilkesbarre		547,560
Total	627,938	655,720

This tells the whole tale of the quantity of anthracite moved towards the seaboard. Schuylkill County loses 627,938 tons, and the Lehigh and Lackawanna regions gain 655,720 tons. Is it not so?

Notice.

We have appointed Messrs. Hammett & Neill, 217 Walnut street, Philadelphia, sole agents for the sale of our Silver Brook Lehigh Coal, from Port Richmond, Philadelphia.

HOSIE & LONGSTREET, *Miners.*

SILVER BROOK, *Feb'y* 21, 1867.

259 *Miners' Journal, New York, Pottsville, Pa., Saturday, January* 25, 1868.

Central Railroad of New Jersey.

The following is the quantity of coal transported over the New Jersey Central Railroad in the following years:

Years.	Lehigh.	Lackawanna.	Total.
	Tons.	*Tons.*	*Tons.*
1856	33,325	98,670	131,994
1857	84,881	209,950	294,791
1858	122,923	417,726	540,549
1859	180,054	461,430	641,487
1860	263,865	590,862	854,647
1861	254,367	568,869	823,235
1862	311,296	502,375	816,571
1863	435,729	613,954	1,049,683
1864	474,221	675,743	1,149,964
1865	509,619	494,687	1,004,306
1866	511,076	779,173	1,290,249
1867	513,383	854,520	1,369,903
	3,694,742	6,267,946	9,964,688

Of the above quantity, 113,692 tons of Lehigh and 10,852 Lackawanna' in all 124,544 tons were consumed on the line, the balance reached Elizabethport and Port Johnson.

We are indebted to P. H. Wychoff, esq., general freight agent of the road, for the following detailed account of the coal distribution:

260 Statement of number of tons coal transported over the Central Railroad of New Jersey, during the year 1867:

	Tons.
Lehigh	513,383
Lackawanna	854,520
Total	1,367,903

Of this amount there was consigned to—

Lehigh.	Port Johnson	193,299
	Elizabethport	206,392
	Points on line of road	113,692
Lackawanna.	Elizabethport	843,668
	Points on line of road	10,852

The coal at Port Johnson was consigned to the following parties:

Rathburn, Stearns & Co	7,660
W'm Hunter, jr	1,766
Hunter & Rommel	1,400
Morris & Ely	1,255
A. Pardee & Co	99,772
Caldwell, Conant & Co	5,383
L. Audenreid & Co	47,421
Honey Brook Coal Co	21,187
New Boston Coal & Mining Co	2,090
Day & Huddle	533
F. P. Spinola	4,150
Ashburton Coal Co	319
L. J. Belloni, jr	1,078
Tyler & Co	126
A. T. Stout & Co	5,118
J. E. Rathbun	42

261 The Lehigh coal at Elizabethport was consigned to the following parties:

E. A. Packer & Co	46,344
L. Audenreid & Co	8,405
Samuel Bonnell, jr	48,510
Day, Huddle & Co	22,329
John White	95
Wilkesbarre C. & I. Co	10,697
Randolph Bros	11,253
A. T. Stout & Co	25,994
Van Dusen, Lochman & Co	1,738
D. Van Lien	576
New Boston Coal & Mining Co	20,682
Hunter & Rommel	735
Mineral Springs	5,336
Honey Brook Coal Co	399
C. B. Linderman & Co	2,255
John Rommel, jr	820
J. B. Cochran	196
J. E. Rathbun	123
The Lackawanna coal at Elizabethport was consigned to Del., Lack'a & West'n R. R. Co	843,668

DELAWARE & HUDSON CANAL COMPANY,
OFFICE COAL DEPARTMENT,
Providence, Pa., Dec'r 10th, 1867.

Statement of coal mined and forwarded by Delaware & Hudson Canal Company for the year ending December 9th, 1867, with sources whence received:

Carbondale, Coal Brook			89,394
" Slope			36,212
262 Carbondale, No. 1 shaft		66,866	
" No. 3 shaft		43,130	
" Racket Brook		144,358	
		379,960	
Rushdale, J. Jermyn		129,029	
Archbald, Easton & Co		144,035	
" Boston & Lackawanna		90,181	
			234,215
Olyphant, Grassy Island		97,280	
" "Oly.," No. 1		98,640	
" " No. 2		103,057	
" " No. 3		122,578	
			421,556
Dickson, Elk Hill C. Co			60,397
Providence, Leggitt's Creek		76,050	
Vonsbirch		161,670	
			237,720
Mill Creek, Union Coal Co			44,609
Total for 1867			1,507,487
Total for 1866			1,391,674
Increase in 1867			115,813

E. W. WESTON, *Sup't.*

LEHIGH COAL AND NAVIGATION COMPANY.

The total tonnage of the Lehigh Canal, (coal,) in 1867, was 1,006,604 tons, distributed as follows:

Consumed on line of Lehigh Canal	67,340
Passed into the Del. Div. Canal	767,998
" " Morris Canal	171,266

The coal passed into the Del. Div. Canal was distributed as follows:

	Consumed on line of Del. Div. Canal	43,764
263	Passed into Del. & Raritan Canal	472,751
	Passed through to Bristol	251,483

W. B. WHITNEY,
Manager Coal Department.

Miners' Journal, Pottsville, Pa., Saturday, March 28, 1868.

We direct attention to the coal card of Joseph F. Dean & Co. This coal is mined on the famous vein of the Lackawanna region, at Wilksbarre, Pa. Its reputation in the Eastern market as a family Lackawanna coal is too well known for us to add our recommendation, and we feel assured that Messrs. Dean & Co., the sole shippers, will sustain its good reputation, as in the past. The company are the owners of pier 9, Elizabethport, its shipping point, thus ensuring to customers the shipment of this coal without mixtures, and its large capacity ensures despatch in delivery on board.

"WASTE OF OUR ANTHRACITE MINES, AND ITS UTILIZATION."

The fifth number of this interesting series of papers will be found on the first page of to-day's Journal. This subject is deservedly attracting much attention.

TO THE DEALERS IN COAL.

264 The undersigned beg leave to notify the trade and consumers generally, that they have arranged for the sale of all the Old Company's Lehigh coal at New York tide-water; and those who desire to purchase the genuine article at wholesale, can obtain it from us, only.

The superior quality of the Old Company's Lehigh coal for domestic, manufacturing, and foundry purposes is so generally recognized by those who have heretofore used it, that it needs no recommendation from us. To those who have not tried it, we beg to say that it is unequaled in quality, and excelled by no other Lehigh coal coming to market.

Orders addressed to either of the subscribers will meet with prompt attention.

(Signed) LEWIS AUDENRIED & CO.
CALDWELL, CONANT, & CO.
CALDWELL, GORDON & CO.
DETMOLD & COX.
VAN DUSEN, BROTHER, & CO.
TYLER & CO.

NEW YORK, *March 16th*, 1868.

Referring to the above notice, I confirm the same.
(Signed) W. B. WHITNEY,
Manager Coal Department Lehigh Coal and Nav. Co.

MAR. 28, '68. 13-3 m.

265 DAY, HUDDELL & CO.,

Miners and shippers of coal.

Offices: No. 205½, Walnut st., Philadelphia;
" 111 Broadway, (Trinity Building,) N. Y.;
" 7 Doane street, Boston.

Sole agents for the sale of the following celebrated coals: Harleigh Lehigh Coal, Hickory Coal Co's Hickory & Draper coals, and the Excelsior Coal Co's Shamokin coal.

Shipping wharves: Pier No. 18, P't Richmond; pier No. —, Elizabethport, N. J.

FEB'Y 15, '68. 7, 9 m.

COAL. COAL.

A. T. STOUT & CO.,

Miners and shippers of the celebrated "Fulton" & "Stout" (Lehigh) coals, from the Ebervale and the Stout colleries, near Hazleton, Pa., and dealers in the best varieties of anthracite and bituminous coals.

Delivered direct from mines on board vessel at Trenton, N. J.; Elizabethport, N. J.; N. Brunswick, N. J.; Port Richmond, Pa.

Offices: 44 & 46 Trinity Building, 111 Broadway, New York.

A. T. STOUT.
S. VAN WICKLE.
G. LEE.

JAN. 1, '68.

Respondents' Exhibit, No. 2., Oct. 30, 1869. R. E. S., Examiner, &c.

266

267 *Respondents' Exhibit, No. 3. R. E. S., Examination.*

United States Railroad and Mining Register, Thomas S. Fernon, editor and publisher. Office No. 423 Walnut street, near Fifth street. Established May 31, 1856.

The subscription price of the Register, when mailed to Europe, or elsewhere outside of the United States, is four dollars per annum; within the United States, three dollars per annum. The subscription price must in all cases accompany an order for the paper; otherwise it will not receive attention.

PHILADELPHIA, *Saturday, February* 29, 1868.

RAILROADS ACROSS MOUNTAINS IN PENNSYLVANIA.

The highest elevation overcome in Pennsylvania, in a single rise, by a locomotive road, is on the Delaware, Lackawanna and Western Railroad, from the Delaware River, where it is 288 feet above tide to the Pokono

summit, which is 1,969 feet above tide; making the altitude surmounted 1,681 feet. Scranton City is 739 feet above tide, and 1,249 feet below the summit. The Moosic summit on the Delaware and Hudson Canal Co's Railroad between Honesdale and Carbondale is 1,888 feet above tide. The summit on the two Lehigh companies' roads, near
268 Wilkesbarre, is 1,630 feet above tide; Wilkesbarre is 527 feet feet above tide; elevation overcome, 1,103 feet, which is accomplished on a grade of 96 feet in the mile.

To get out of the Lackawanna coal basins across the water-shed to the Lehigh and Delaware rivers, greater elevation is overcome than is encountered at the Allegheny Mountains. True, the Allegheny summit is higher above tide than any other mountain in Pennsylvania, but the Allegheny is twice as many miles distant from tide-water as the Wyoming, Pokono, and Moosic, which rise between the northern coal-field and the great markets.

SCHUYLKILL COAL TRADE.

Amount of coal transported by the Philadelphia and Reading Railroad, and shipped by the Schuylkill Canal; for the week ending Thursday, Feb. 27, 1868, and for official and navigation year:

From—	By Reading Railroad.		By Schuykill Canal.	
	1868. Week.	1867. Week.	1868. Week.	1867. Week.
	Tons. Cwt.	*Tons. Cwt.*	*Tons. Cwt.*	*Tons. Cwt.*
Total anthracite coal	36,740 15	48,398 14		
Total Harrisb'g bitum's coal	4,610 01	2,443 16		
Total all kinds for week, 1868	41,350 16	50,842 10		
Total all kinds for week, 1867	50,842 10			
Increase				
Decrease	9,491 14			

269 Philadelphia and Reading R. R. Schuylkill Canal.	For season. 1868.	For season. 1867.	For season. 1868.	For season. 1867.
Total all kinds for season 1868	519,037 19	422,297 12		
Total all kinds for season 1867	422,297 12			
Increase	86,740 07			
Decrease				

LEHIGH COAL TRADE.

Quantity of coal shipped by the Lehigh Canal and transported by the Lehigh Valley Railroad from points in the Lehigh Valley for week ending Saturday, Feb. 22, 1868, and for official year by railroad, and season of navigation by canal.

From—	By Lehigh Valley R. R.		By Lehigh Navigation.	
	For week.	For season.	For week.	For season.
	Tons. Cwt.	*Tons. Cwt.*	*Tons. Cwt.*	*Tons. Cwt.*
Total 1868	39,328 13	405,398 11		
Total 1867	25,998 03	219,174 07		
	13,330 10 Increase.	186,224 04 Increase.		

LACKAWANNA COAL TRADE.

Delaware, Lackawanna and Western Railroad.—Coal transported over the Delaware, Lackawanna and Western Railroad for week ending Saturday, Feb. 22, 1868, and for year commencing January 1, 1868.

	Week. 1868.	Year. 1868.	Week. 1867.	Year. 1867.
	Tons. Cwt.	*Tons. Cwt.*	*Tons. Cwt.*	*Tons. Cwt.*
Shipped north	7, 667 16	60, 760 04	6, 2'8 18	45, 859 17
270 " south	19, 547 05	148, 568 18	24, 071 17	157, 817 02
Total	27, 215 01	209, 329 02	30, 290 15	203, 676 19
	Dec. 3, 075 14	Inc. 5, 652 03		

PENNSYLVANIA COAL COMPANY.

Shipments of Pittston coal by the Pennsylvania Coal Company for week ending Feb. 22, 1868, and for year.

	Week. 1868.	Year. 1868.	Week. 1867.	Year. 1867.
	Tons. Cwt.	*Tons Cwt.*	*Tons. Cwt*	*Tons. Cwt.*
By D. & H. Canal				
By Erie R. R.	4, 055 07	79, 638 02	8, 192 17	38, 537 01
Total	4, 055 07	79, 638 02	8, 192 17	38, 537 01
	Dec. 4, 137 10	Inc., 41, 101 01		

Shamokin coal trade.

United States Railroad and Mining Register. Thomas S. Fernon, editor and publisher. Office, No. 423 Walnut street, near Fifth street. Established May 31, 1856.

The subscription price of the Register, when mailed to Europe or elsewhere outside of the United States, is four dollars per annum; within the United States, three dollars per annum. The subscription price must in all cases accompany an order for the paper; otherwise it will not receive attention.

PHILADELPHIA, *Saturday, April* 4, 1868.

271 *Coal transported over the Central Railroad of New Jersey.*

The coal tonnage over the Central R. R. of New Jersey since the transportation of coal was commenced has been as follows:

	Lackawanna.	Lehigh.	Total.	Inc. or dec.
	Tons.	*Tons.*	*Tons.*	
1856	98, 670	33, 325	131, 995	131, 995 Inc.
1857	209, 950	84, 841	294, 791	162, 796 "
1858	417, 736	122, 933	540, 649	245, 858 "
1859	455, 681	183, 277	638, 958	98, 309 "
1860	590, 863	263, 906	854, 769	215, 811 "
1861	568, 869	254, 345	823, 214	31, 555 Dec.
1862	502, 375	314, 195	816, 570	6, 644 "
1863	613, 954	435, 927	1, 049, 881	233, 311 Inc.
1864	675, 743	474, 221	1, 149, 964	100, 083 "
1865	494, 687	509, 819	1, 004, 506	145, 458 Dec.
1866	778, 173	511, 076	1, 289, 249	284, 743 Inc.
1867	885, 620	513, 425	1, 369, 045	79, 796 "
Total	6, 262, 311	3, 701, 280	9, 963, 591	

LACKAWANNA COAL TRADE.

Delaware, Lackawanna and Western Railroad.—Coal transported over the Delaware, Lackawanna and Western Railroad for week ending Saturday, March 28, 1868, and for year commencing January 1, 1868.

	Week. 1868.	Year. 1868.	Week. 1867.	Year. 1867.
	Tons. Cwt.	*Tons. Cwt.*	*Tons. Cwt.*	*Tons. Cwt.*
Shipped north	7,293 12	89,874 14	7,849 16	84,915 07
272 " south	22,200 18	240,914 07	27,686 06	287,498 03
Total	29,494 01	330,789 01	35,536 02	372,413 10
	De., 6,041 12	Dec. 41,624 09		

Shamokin coal trade.

United States Railroad and Mining Register. Thomas S. Fernon, editor and publisher. Office, No. 423 Walnut street, near Fifth street. Established May 31, 1856.

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PHILADELPHIA, *Saturday, April* 18, 1868.

The Delaware, Lackawanna and Western Railroad is 113 miles long, measured from Great Bend, on the Susquehanna, to the Delaware River below the Water Gap. Of 2,140,134 tons of freight carried in 1867, there were of anthracite coal 1,821,118 tons, equal to 85 per cent. of the whole tonnage moved.

273 The whole number of passengers carried, of all classes, was 187,533. Whilst the number of passengers carried in same time over the Lackawanna and Bloomsburg, which is 80 miles long, extending from Scranton to Northumberland, and which is dominated and operated as a tributary of the Delaware, Lackawanna & Western Railroad, was 269,554.

The paid-in capital stock of the Delaware, Lackawanna and Western Railroad Company is	$13,386,020
Funded and floating debt	$4,016 205
Total capital and debt	$17,402,225

Double track, 50 miles; single track, 63 miles; total, 113 miles; average cost of road per mile, $154,002. The company own no terminal facilities at tide-water, these being furnished by the Central Railroad Company of New Jersey; but they do own land and collieries in the Lackawanna coal basin.

LACKAWANNA COAL TRADE.

Delaware, Lackawanna & Western Railroad.—Coal transported over the Delaware, Lackawanna and Western Railroad, for week ending Saturday, April 11, 1868, *and for year commencing January* 1, 1868.

	Week. 1868.	Year. 1868.	Week. 1867.	Year. 1867.
	Tons. Cwt.	*Tons. Cwt.*	*Tons. Cwt.*	*Tons. Cwt.*
Shipped north	6,423 02	102,632 02	6,997 02	98,998 05
" south	24,564 08	281,994 18	28,190 15	341,310 14
274 Total	30,987 10	384,627 00	35,187 17	440,308 19
	Dec. 4,200 07	Dec. 55,681 19		

DELAWARE AND HUDSON CANAL,

Coal shipped by the Delaware and Hudson Canal from Honesdale and Hawley, for week ending Saturday, April 11, 1868, *and for season.*

	Del. & Hud. Canal Co.		Pennsylvania Coal Co.		Total.	
	Week.	Year.	Week.	Year.	Week.	Year.
	Tons. Cwt.	*Tons. Cwt.*	*Tons. Cwt.*	*Tons. Cwt.*	*Tons. Cwt.*	*Tons. Cwt.*
1868.	24,720 00	35,645 00	229 00	229 00	24,949 00	35,874 00
1867.	43,320 00	108,605 00	687 00	687 00	44,007 00	109,292 00
	18,600 00 Decrease.	72,960 00 Decrease.	458 00 Decrease.	458 00 Decrease.	19,058 00 Decrease.	73,418 00 Decrease.

United States Railroad and Mining Register. Thomas S. Fernon, editor and publisher. Office No. 423 Walnut street, near Fifth street. Established May 31, 1856.

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PHILADELPHIA, *Saturday, April* 25, 1868.

The competing routes from the anthracite mines to tide-water—the Philadelphia and Reading Railroad.

275 The anthracite coal area of Pennsylvania is computed to contain 470 square miles, or 300,800 acres.

This is divided into three fields, to wit:

The Southern or Schuylkill coal field, comprising all the anthracite territory within the hydrographic basin of the Schuylkill River, 115 square miles; also 31 square miles in the hydrographic basin of the Susquehanna River; total 146 square miles.

The second or middle coal field, comprising, according to the apportionment of the latest local authority, the Shamokin basin, 51 square miles; the Mahanoy basin—from which the Philadelphia and Reading Railroad operates three first class tributaries—41 square miles; and the Beaver Meadow, Hazleton, Big and Little Black Creek cups and saucers—being small or shallow—35 square miles; total 136 square miles. About four-fifths of this field is in the hydrographic basin of the Susquehanna River; the remaining one-fifth is in the hydrographic

basin of the Lehigh River, and supplies the very hard anthracite known as the Hazleton and Beaver Meadow coals.

The third or Northern Wyoming Lackawanna coal field is wholly within the hydrographic basin of the Susquehanna River, and contains 198 square miles.

The hydrographic distribution or classification, therefore, is about as follows:

276 In the Schuy'kill River basin, 115 square miles—73,000 acres.
In the Lehigh River basin, 30 square miles—19,200 acres.
In the Susquehanna River basin, 325 square miles—208,000 acres.

From a large portion of the anthracite area in the Susquehanna River basin, the shortest and best outlets to market are down the Schuy'kill and Lehigh River Valleys.

The average estimated anthracite thickness in the three fields is:
In the first coal field, 25 yards, or 75 feet.
In the second coal field, 15 yards, or 45 feet.
In the third coal field, 15 yards, or 45 feet.

The Schuylkill, which is nearest to tide-water, is largest in contents, twin considerations of distinguishing significance.

The triple sources of the anthracite tonnage of the Philadelphia and Reading Railroad are the Schuy'kill coal field, and the coal basins of the Mahanoy and Shamokin. From the Schuylkill mines the branches and leased laterals have de'cending grades to the Philadelphia and Reading Railroad and the Schu'lkill Canal. In former years this district yielded a large percentage of the aggregate of anthracite mined; and after the latter-developed anthracite territory shall have been worked off
277 a little more above water level, and in the veins accessible at least cost, this district, with shafts and machinery suited to deep workings, will again contribute a large percentage of the ag'regate tonnage sent to market to meet the wants of revived demand and largely increased consumption.

Evening Telegram, February 25, 1868.

The following is the area of the anthracite coal fields, together with the thickness of coal measures:

Region.	Area in miles.	Thickness in feet.	No. of acres.
Schuylkill	180	100	115,200
Lehigh	44	50	23,160
Shamokin	50	70	32,000
Lackawan'a	100	60	64,000
Wyoming	98	70	62,720

Personalities.

Saward's Coal Freight Circular, New York, July 5, 1869.—*No.* 4.

LACKAWANNA COAL TRADE.

278 *Delaware, Lackawanna & Western Railroad.—Week ending Saturday, June* 26, 1869, *and for year commencing January* 1, 1869.

	Week. 1869.	Year. 1869.	Week. 1868.	Year. 1868.
Shipped north		205,857	14,158	227,953
Shipped south		587,631	21,111	528,262
Total		793,488	35,269	756,215

Delaware and Hudson Canal.—Week ending Saturday, June 26, 1869, and for season.

	Del. & Hud. Canal Co.		Pennsylvania Coal Co.		Total.	
	Week.	Year.	Week.	Year.	Week.	Year.
1869.	31, 360 00	501, 259 00	599 13	6, 650 11	31, 959 13	507, 909 11
1868.	52, 722 00	540, 625 00	829 19	9, 675 12	53, 551 19	550, 300 12

Pennsylvania Coal Company.—Week ending June 26, 1869, and for year,

	Week. 1869.	Year. 1869.	Week. 1868.	Year. 1868.
By D. & H. Canal	599 23	6, 650 11	829 19	9, 675 12
By Erie Railroad	25, 363 19	449, 532 02	23, 089 16	401, 637 10
Total	25, 963 12	456, 182 13	23, 919 15	411, 313 02

New York Daily Tribune, Saturday, August 28, 1869.

In the Lackawanna region the great companies have achieved a triumph which we think time will prove to be injurious to them.
279 Their miners go to work at fixed rates, which are unchangeable for the present, but which, we presume, are higher than they can pay after coal drops to average prices, as it will and must. Then the companies will reduce the pay of their miners at the hazard of inciting strikes and a renewal of all the old troubles. Whereas, if the "basis" had been conceeded, the wages of the miners would have fallen with the prices of coal, and no one could have complained; and as the companies propose to renew and perpetuate their monthly sales of coal by auction, there could have been no question as to the real price of the article.

In our view it is true, permanent interest of all concerned to fix a just and permanent "basis" or proportion, under which the miner, the operator, and the transporter shall each receive a definite, ratable proportion of the price at which coal is sold by wholesale on its arrival at this port, or wherever its chief market may be. And this, we trust, will yet be done.

Respondent's Exhibit No. 3. R. E. Stilwell, examiner.

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281 *Respondent's Exhibit, No. 4. R. E. S., examiner.*

United States Railroad and Mining Register. Thomas S. Fernon, editor and proprietor. Office No. 423 Walnut street, near Fifth street. Established May 31, 1856.

The subscription price of the Register, when mailed to Europe, as elsewhere outside of the United States, is four dollars per annum; within the United States, three dollars per annum. The postage on the foreign destination is the cause of the difference. The subscription price must in all cases accompany an order for the paper; otherwise it will not receive attention.

PHILADELPHIA, *Saturday, March* 2, 1867.

SCHUYLKILL COAL TRADE.

Amount of coal transported by the Philadelphia and Reading Railroad, and shipped by the Schuy'kill Canal, for the week ending Thursday, Feb. 28, 1867, *from the points named, and for official and navigation year.*

Points of supply from railroads.	By Reading Railroad.		By Schuylkill Canal.	
	1867. Week.	1866. Week.	1867. Week.	1866. Week.
	Tons. Cwt.	*Tons. Cwt.*	*Tons. Cwt.*	*Tons. Cwt.*
Schuylkill. St. Clair	14,669 04	18,266 15		
Port Carbon	4,963 13	9,036 13		
Pottsville	82 18	522 00		
282 Schuylkill Haven	16,339 12	21,503 05		
Auburn	2,163 17	1,417 17		
Port Clinton	9,855 00	7,339 15		
Harrisburg & Dauphin	324 10	9 16		
Total anthracite coal	48,398 14	58,096 01		
Total Harrisb'g bitum's coal	2,443 16	3,801 02		
Total all kinds for week, 1867	50,842 10	61,897 3		
Total all kinds for week, 1866	61,897 03			
Increase				
Decrease	11,054 93			
Philadelphia & Reading R. R. and Schuylkill Canal.	**For season 1867.**	**For season. 1866.**	**For season. 1867.**	**For season. 1866.**
Total all kinds for season, 1867	433,896 18	583,748 08		
Total all kinds for season, 1866	583,748 08			
Increase				
Decrease	149,851 90			

LEHIGH COAL TRADE.

Quantity of coal shipped by the Lehigh Canal, and transported by the Lehigh Valley Railroad, from points in the Lehigh Valley, for week ending Saturday, February 23, 1867, *and for official year, by railroad, and season of navigation by canal.*

From—	By Lehigh Valley R. R.		By Lehigh Navigation.	
	For week.	For season.	For week.	For season.
	Tons. Cwt.	*Tons. Cwt.*	*Tons. Cwt.*	*Tons. Cwt.*
Total, 1867	25,998 03	219,174 07		
Total, 1866	35,383 10	323,068 17		
	9,385 07 Decrease.	103,894 10 Decrease.		

283 *Pennsylvania Coal Company.—Shipments of Pittston coal by the Pennsylvania Coal Company for week ending Feb.* 23, 1867, *and for year.*

	Week. 1867.	Year. 1867.	Week. 1866.	Year. 1866.
	Tons. Cwt.	*Tons. Cwt.*	*Tons. Cwt.*	*Tons. Cwt.*
By D. & H. Canal				
By Erie R. R.	9,884 10	39,840 16	6,888 08	59,072 06
Total	9,884 10	39,840 16		59,072 06
	Inc 2,956 04	Dec. 19,231 10		

LACKAWANNA COAL TRADE.

Delaware, Lackawanna and Western Railroad.—Coal transported over the Delaware, Lackawanna and Western Railroad for five days, ending Saturday, Feb. 23, 1867, and for year commencing January 1, 1866.

	Week. 1867.	Year. 1867.	Week. 1866.	Year. 1866.
	Tons. Cwt.	*Tons. Cwt.*	*Tons. Cwt.*	*Tons. Cwt.*
Shipped north	6,218 18	45,859 17	5,901 17	48,932 17
south	24,071 17	157,817 02	17,657 19	107,654 07
Total	30,290 15	203,676 19	23,559 16	156,587 04
	Inc. 6,730 19	Inc. 47,089 15		

United States Railroad and Mining Register. Thomas S. Fernon, editor and proprietor. Office No. 423 Walnut street, near Fifth street. Established May 31, 1856.

284 The subscription price of the Register when mailed to Europe or elsewhere outside of the United States, is four dollars per annum; within the United States three dollars per annum. The subscription price must in all cases, accompany an order for the paper; otherwise it will not receive attention.

PHILADELPHIA, *Saturday, July 6, 1867.*

SCHUY'KILL COAL TRADE.

Amount of coal transported by the Philadelphia and Reading Railroad, and shipped by the Schuy'kill Canal for the week ending Thursday, July 4, 1867, from points named and for official and navigation year.

Points of supply from railroads.	By Reading Railroad.		By Schuylkill Canal.	
	1867. Week.	1866. Week.	1867. Week.	1866. Week.
	Tons. Cwt.	*Tons. Cwt.*	*Tons. Cwt.*	*Tons. Cwt.*
Schuylkill. St. Clair	24,106 00	25,347 15		
Schuylkill. Port Carbon	5,814 04	6,667 19	11,037 05	11,936 00
Schuylkill. Pottsville	749 07	1,225 01	16 10	1,084 10
Schuylkill. Schuy'kill Haven	18,712 07	25,049 16	17,555 00	20,180 00
Schuylkill. Auburn	3,300 04	2,539 09		
Schuylkill. Port Clinton	10,908 10	11,841 07	1,455 00	2,397 00
Harrisburgh & Dauphin	324 10	9 16		
Total anthracite coal	65,536 09	72,752 12		
Total Harrisb'g bitum's coal	3,690 16	5,405 00		
Total all kinds for week, 1867	70,227 05	78,157 12	30,053 15	35,597 10
285 Total all kinds for week, 1866	78,157 12		35,597 10	
Increase				
Decrease	7,929 07		5,543 15	

Philadelphia & Reading R. R. and Schuy'kill Canal.	For season. 1867.	For season. 1866.	For season. 1867.	For season. 1867.
Total all kinds for season 1867	1,818,840 05	2,065,405 01	427,325 07	596,533 05
Total all kinds for season 1866	2,065,405 01		596,533 05	
Increase				
Decrease	246,564 16		169,207 18	

LEHIGH COAL TRADE.

Quantity of coal shipped by the Lehigh Canal, and transported by the Lehigh Valley Railroad from points in the Lehigh Valley, for week ending Saturday, June 29th, 1867, and for official year by railroad and season of navigation by canal.

From—	By Lehigh Valley R. R.		By Lehigh Navigation.	
	For week.	For season.	For week.	For season.
	Tons. Cwt.	*Tons. Cwt.*	*Tons. Cwt.*	*Tons. Cwt.*
Total, 1867	51, 191 16	961, 078 16	38, 561 09	298, 202 01
Total, 1866	45, 837 18	897, 949 19	37, 604 04	367, 221 07
	5, 353 18 Increase.	63, 128 17 Increase.	957 03 Increase.	69, 019 06 Decrease.

LACKAWANNA COAL TRADE.

Delaware, Lackawanna & Western Railroad.—Coal transported over the Delaware, Lackawanna, and Western Railroad for five days ending Saturday, June, 29, 1867, and for year commencing January 1, 1860.

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	Week. 1867.	Year. 1867.	Week. 1866.	Year. 1866.
	Tons. Cwt.	*Tons. Cwt.*	*Tons. Cwt.*	*Tons. Cwt.*
Shipped north	11, 397 06	192, 741 10	10, 257 18	197, 786 00
" south	25, 459 01	618, 097 10	23, 599 02	502, 461 07
Total	36, 856 07	810, 839 09	32, 857 00	700, 247 07
	Inc. 2, 999 07	Inc. 110, 592 02		

Delaware and Hudson Canal.—Coal shipped by the Delaware and Hudson Canal from Honesdale and Hawley, for week ending Saturday, June 29, 1867, and for season.

	Del. & Hudson Coal Co.		Pennsylvania Coal Co.		Total.	
	Week.	Year.	Week.	Year.	Week.	Year.
	Tons.	*Cwt.*	*Tons. Cwt.*	*Tons. Cwt.*	*Tons. Cwt.*	*Tons. Cwt.*
1867	43, 942 00	499, 717 00	.....	7, 046 02	43, 942 00	506, 763 02
1866	45, 750 00	513, 228 00	235 08	8, 108 12	45 985 00	521, 336 00
	1, 808 00 Decrease.	13, 511 00 Decrease.	236 08 Decrease.	1, 062 10 Decrease.	2, 043 00 Decrease.	14, 572 18 Decrease.

Pennsylvania Coal Company.—Shipments of Pittston coal by the Pennsylvania Coal Company, for week ending June 29, 1867, and for year.

	Week. 1867.	Year. 1867.	Week. 1866.	Year. 1866.
	Tons. Cwt.	*Tons. Cwt.*	*Tons. Cwt.*	*Tons. Cwt.*
By D. & H. Canal	.....	7, 046 02	235 08	8, 108 12
By Erie R. R.	22, 464 00	363, 144 19	.....	99, 593 01
287 Total	22, 464 00	370, 191 01	235 08	107, 701 13
	Inc. 22, 228 12	Inc. 262, 489 08		

Shamokin coal trade.

Quantity of coal transported over the Shamokin division, Northern Central Railway, for week ending Saturday, June 29, 1867, and for year.

Coal tonnage on the Central Railroad of New Jersey.

The coal tonnage over the Central Railroad of New Jersey, since the transportation of coal was commenced, has been as follows:

	Lackawanna.	Lehigh.	Total.
	Tons.	*Tons.*	*Tons.*
1856	98,670	33,325	131,995
1857	209,950	84,841	294,791
1858	417,726	122,923	540,649
1859	455,681	183,277	638,958
1860	590,863	263,906	854,769
1861	568,869	254,345	823,214
1862	502,375	314,195	816,570
1863	613,954	435,927	1,049,884
1864	675,743	474,221	1,149,961
1865	494,687	509,819	1,004,506
1866	778,173	511,076	1,289,249
Total	5,406,691	3,187,855	8,594,546

288 United States Railroad and Mining Register, Thomas S. Fernon, editor and proprietor. Office No. 423 Walnut street, near Fifth street. Established May 31, 1856.

The subscription price of the Register, when mailed to Europe or elsewhere outside of the United States, is four dollars per annum; within the United States, three dollars per annum. The subscription price must in all cases accompany an order for the paper; otherwise it will not receive attention.

PHILADELPHIA, *Saturday, September* 21, 1867.

The Lackawanna companies, which made war by cutting down the coal market, will next year have to confront from the Schuy'kill region a compe'tion that will be waged on a basis very different from the one-sided struggle of the current year. On a minimum charge the Philadelphia and Reading Railroad can "fight it out on that line, if it take all summer."

United States Railroad and Mining Register, Thomas S. Fernon, editor and proprietor. Office No. 423 Walnut street, near Fifth street.
289 Established May 31, 1856.

The subscription price of the Register, when mailed to Europe or elsewhere outside of the United States, is four dollars per annum; within the United States, three dollars per annum. The subscription price must in all cases accompany an order for the paper; otherwise it will not receive attention.

PHILADELPHIA, *Saturday, November* 16, 1867

The joint equipment of the Lehigh rail lines, on the opening of the new year, will have a capacity for moving over a hundred thousand tons of coal per week, and, with the canal open next spring, the three Lehigh lines, which will then be in operation, will have a joint capacity for moving to market a hundred and fifty thousand tons per week; but how much coal tonnage the three Lehigh coal lines will be able to command next year will depend, in part, on the *the* then condition of the mar-

ket, and also on the temper of coal-carrying lines leading down the Schuy'kill and up the Lackawanna, since the three anthracite coal fields, the Schuylkill, the Lehigh, and the Wyoming-Lackawanna, all
290 contribute to the supply of the common seaboard market.

Financially considered, the Lehigh Valley Railroad, from its inauguration as a coal-carrier in 1856, as shown in its an'ual exhibits and in its dividends, has been a splendid success.

And the available surplus which the Lehigh Coal and Navigation Company had on hand when it embarked in the construction of a new road in Luzerne County and along the Lehigh River, shows that it, too, had been a financial success, for it paid dividends and accumulated interest-bearing assetts.

SCHUY'KILL COAL TRADE.

Amount of coal transported by the Philadelphia and Reading Railroad, and shipped by the Schuy'kill Canal, for the week ending Thursday, Nov. 14, 1867, *from points named, and for official and navigation year.*

Points of supply from railroads.	By Reading Railroad.		By Schuy'kill Canal.	
	1867. Week.	1866. Week.	1867. Week.	1866. Week.
	Tons. Cwt.	*Tons. Cwt.*	*Tons. Cwt.*	*Tons. Cwt.*
Schuylkill. St. Clair	29, 935 13	23, 345 18		
Schuylkill. Port Carbon	7, 289 01	8, 096 00	10, 142 08	9, 299 10
Schuylkill. Pottsvillie	740 15	103 15	687 00	833 00
Schuylkill. Schuy'kill Haven	19, 067 05	23, 787 02	18, 081 10	22, 750 10
Schuylkill. Auburn	3, 748 06	4, 267 09		
Schuylkill. Port Clinton	5, 997 15	14, 185 18	1, 140 00	1, 021 00
291 Harrisburg & Dauphin	2, 362 16	29 08		
Total anthracite coal	69, 139 13	73, 815 03		
Total Harrisburgh & bitum's coal	6, 896 00	6, 748 16		
Total all kinds for week, 1867	75, 035 13	89, 563 19	30 050 10	33, 904 00
Total all kinds for week, 1866	81, 563 19	.....	33, 904 00	.....
Increase	.....	.....	.....	
Decrease	5, 528 06	.....	3, 853 10	
Philadelphia & Reading R. R. and Schuy'kill Canal.	**For season. 1867.**	**For season. 1866.**	**For season. 1867.**	**For season. 1866.**
Total all kinds for season, 1867	3, 271, 098 09	3, 571, 079 13	919, 576 17	1, 198, 853 09
Total all kinds for season, 1866	3, 571, 079 13	.....	1, 198, 853 09	
Increase	.....	.....	.....	
Decrease	299, 980 04	.....	279, 276 12	

LEHIGH COAL TRADE.

Quantity of coal shipped by the Lehigh Canal, and transported by the Lehigh Valley Railroad from points in the Lehigh Valley, for week ending Saturday, Nov. 9, 1867, *and for official year by railroad, and season of navigation by canal.*

From—	By Lehigh Valley R. R.		By Lehigh navigation.	
	For week.	For season.	For week.	For season.
	Tons. Cwt.	*Tons. Cwt.*	*Tons. Cwt.*	*Tons. Cwt.*
Total 1867	48, 113 13	1, 799, 975 17	30, 071 06	906, 393 17
Total 1866	36, 832 08	1, 636, 614 14	37, 319 05	981, 030 18
	11, 281 05 Increase.	163, 361 03 Increase.	7, 247 19 Decrease.	74, 637 01 Decrease.

292 LACKAWANNA COAL TRADE.

Delaware, Lackawanna and Western Railroad.—Coal transported over the Delaware, Lackawanna and Western Railroad for five days ending Saturday, Nov. 9, 1867, and for year commencing Jan'y 1, 1867.

	Week. 1867.	Year. 1867.	Week. 1866.	Year. 1866.
	Tons. Cwt.	*Tons. Cwt.*	*Tons. Cwt.*	*Tons. Cwt.*
Shipped north	14, 429 01	424, 525 11	9, 644 05	373, 637 16
south	22, 309 10	1, 077, 950 01	20, 972 10	928, 706 13
Total	36, 738 11	1, 502, 495 12	30, 616 15	1, 302, 339 09
	Inc., 6, 121 16	Inc., 206, 156 03		

Delaware and Hudson Canal.—Coal shipped by the Delaware and Hudson Canal from Honesdale and Hawley, for week ending Saturday Nov. 9, 1867, and for season.

	Del. & Hudson Canal Co.		Pennsylvania Coal Co.		Total.	
	Week.	Year.	Week.	Year.	Week.	Year.
	Tons. Cwt.	*Tons. Cwt.*	*Tons. Cwt.*	*Tons. Cwt.*	*Tons. Cwt.*	*Tons. Cwt.*
1867	37, 638 00	1, 224, 613 00	471 14	20, 577 10	38, 109 14	1, 245, 190 10
1866	30, 250 00	1, 190, 644 00	718 09	23, 960 08	30, 968 09	1, 214, 604 08
	7, 388 00 Increase.	23, 969 00 Increase.	246 15 Decrease.	3, 382 18 Decrease.	7, 141 05 Increase.	30, 586 02 Increase.

Shipped for Union Coal Co., for the week ..... 2, 268 tons.
Previous shipments ..... 27, 116 "

Total ..... 29 384 "

293 *Pennsylvania Coal Company.—Shipments of Pittston coal by the Pennsylvania Coal Company for the week ending Nov. 9, 1867, and for year.*

	Week. 1867.	Year. 1867.	Week. 1866.	Year. 1866.
	Tons. Cwt.	*Tons. Cwt.*	*Tons. Cwt.*	*Tons. Cwt.*
By D. & H. Canal	471 14	20, 577 10	718 09	23, 960 08
By Erie R. R.	18, 528 18	727, 597 01	18, 563 17	405, 741 18
Total	18, 730 12	748, 174 11	19, 282 06	429, 702 06
	Dec., 551 14	Inc., 318, 472 05		

Shamokin coal trade.

United States Railroad and Mining Register, Thomas S. Fernon, editor and proprietor. Office No. 423 Walnut street near Fifth street. Eslished May 31, 1856.

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PHILADELPHIA, *Saturday, December* 7, 1867.

Total 1, 948, 385 05

The Lehigh Valley Railroad is a line of long mileage and large capacity, and is the only line south of the Lackawanna outlets that in-
294 creased its coal tonnage in the official year just terminated. This is a singular truth and is conclusive testimony of wide-awake management, ever alert to make available in transportation practice the facilities of the route to its owners and its customers.

United States Railroad and Mining Register, Thomas S. Fernon, editor and publisher. Office No. 423 Walnut street near Fifth street. Established May 31, 1856.

The subscription price of the Register when mailed to Europe or elsewhere outside of the United States is four dollars per annum; within the United States three dollars per annum. The subscription price must in all cases accompany an order for the paper; otherwise it will not receive attention.

PHILADELPHIA, *Saturday, December* 28, 1867.

Total down Lehigh, 2,954,989 02; Total down Schuy'kill,		4,476,004 15
		2,954,989 02
Schuy'kill over Lehigh		1,521,015 13
Coal transported over Phila. & Reading R. R. in 1867		3,446,826 06
Over Lehigh Valley R. R., same year	1,948,385 05	
Over Lehigh Canal, same year	1,006,603 17	
		2,954,989 02
295 Phil. & Read. coal tonnage over both Lehigh carriers		491,837 04

On the opening of navigation next spring, the Lehigh Coal Company will have both a railroad and a canal to supply with tonnage, making three outlets from the Lehigh, exactly as there are three outlets from the Lackawanna—Mauch Chunk and Honesdale being respectively the head of canal navigation. But as the Philadelphia and Reading Railroad and the Lehigh Valley Railroad are both equipped for a much larger coal tonnage than either has hitherto handled in any one year, these two great carriers are as eager as other companies to secure additional coal tonnage, for transportation is largely in excess of the capacity of the coal market for consumption. Mining development, too, has been in excess of the commercial demand, and, as a consequence, reasonable prices have been undersold, and the common market has been overfed. Somebody has already been "hurt," and more will be. Collieries worked at a loss to their owners will suspend operations, or yield diminished production, whereby the mining districts will be
"weeded," and a healthy reaction caused among consumers. The
296 future of the coal market, a little way off, is full of promise, for increase of population and manufactures assure increase in orders for anthracite fuel. But, meantime, the ebb-tide must run out before the flood-tide can set in.

SCHUY'KILL COAL TRADE.

Amount of coal transported by the Philadelphia and Reading Railroad, and shipped by the Schuylkill Canal, for the week ending Thursday, Dec. 26, 1867, from points named, and for official and navigation year.

Points of supply from railroads.	By Reading Railroad.		By Schuy'kill Canal.	
	1867. Week.	1866. Week.	1867. Week.	1866. Week.
	Tons. Cwt.	*Tons. Cwt.*	*Tons. Cwt.*	*Tons. Cwt.*
Schuy'kill. St. Clair	23,149 00	9,251 02		
Schuy'kill. Port Carbon	3,471 14	4,759 05		
Schuy'kill. Pottsville	130 02	61 11		
Schuy'kill. Schuy'kill Haven	4,909 05	2,072 12		
Schuy'kill. Auburn	634 11	528 18		
Schuy'kill. Port Clinton	1,992 14	2,409 01		
Harrisburgh & Dauphin	76 01	16 11		
Total anthracite coal	34,363 07	19,099 00		
Total Harrisb'gh bitum's coal	5,742 10	2,934 18		
Total all kinds for week, 1867	40,105 17	22,033 18		
Total all kinds for week, 1866	22,033 18			
Increase	18,071 19			
Decrease				
297 Philadelphia and Reading R. R. and Schuy'kill Canal.	For season. 1867.	For season. 1866.	For season. 1867.	For season. 1866.
Total all kinds for season, 1867	197,890 11	103,516 14	1,029,178 09	1,292,655 14
Total all kinds for season, 1866	103,516 14		1,292,655 14	
Increase	94,373 17		263,477 05	
Decrease				

LEHIGH COAL TRADE.

Quantity of coal shipped by the Lehigh Canal, and transported by the Lehigh Valley Railroad from points in the Lehigh Valley, for week ending Saturday, Dec. 21, 1867, and for official year by railroad, and season of navigation by canal.

From—	By Lehigh Valley R. R.		By Lehigh Navigation.	
	For week.	For season.	For week.	For season.
	Tons. Cwt.	*Tons. Cwt.*	*Tons. Cwt.*	*Tons. Cwt.*
Total 1867	35,214 19	102,694 08		1,006,603 17
Total 1866	10,379 06	32,469 11		1,066,302 17
	24,835 13 Increase.	70,224 13 Increase.		59,699 00 Decrease.

LACKAWANNA COAL TRADE.

Delaware, Lackawanna and Western Railroad.—Coal transported over the Delaware, Lackawanna, and Western Railroad for five days, ending Saturday, Dec. 21, 1867, and for year commencing January 1, 1867.

	Week. 1867.	Year. 1867.	Week. 1866.	Year, 1866.
	Tons. Cwt.	*Tons. Cwt.*	*Tons. Cwt.*	*Tons. Cwt.*
Shipped north	8,988 19	493,248 08	5,879 06	420,543 15
298 Shipped south	17,600 13	1,197,739 13	20,106 09	1,065,385 15
Total	26,589 12	1,690,988 01	25,985 15	1,485,929 1
	Inc., 603 17	In., 205,058 11		

Pennsylvania Coal Company.—Shipments of Pittston coal by the Pennsylvania Coal Company, for week ending Dec. 21, 1867, and for year.

	Week. 1867.	Year. 1867.	Week. 1866.	Year. 1866.
	Tons. Cwt.			
By D. & H. Canal	.....	21,169 16	.....	24,909 03
By Erie R. R	10,631 13	821,222 09	10,269 05	494,881 15
Total	10,631 13	842,392 05	10,269 05	519,790 18
	Inc., 362 08	Inc. 301,431 11		

Shamokin coal trade.

United States Railroad and Mining Register, Thomas S. Fernon, editor and publisher. Office No. 423 Walnut street near Fifth street. Established May 31, 1856.

The subscription price of the Register when mailed to Europe or elsewhere outside of the United States is four dollars per annum; within the United States, three dollars per annum. The subscription price must, *be* in all cases, accompany an order for the paper; otherwise it will not receive attention.

PHILADELPHIA, *Saturday, January* 4, 1868.

299 Articles on first page: Express Co's. Income and Consolidation. The Inter-colonial Railway. The Canada Grand Trunk Railway. Overland Mail Service. Abuses. Scenes on the Holland Canals. United States Gold Coinage. Coal and Iron in China. Pittsburgh and Toledo. Inventor of the Prussian Needle Gun. Miscellaneous Items.

TAX PAID BY COMPANIES THAT MINE AND CARRY COAL.

It will be seen on reference to the financial statement of the State treasurer, for year ending November 30, 1867, that there were received into the State treasury, from "tax on coal, per act of March 22, 1867, $102,936 59." The act referred to says, "Every railroad, canal, or transportation which possesses the right to mine anthracite coal, or purchase or lease and sell the same, shall quarterly, on the first days of January, April, July, and October, make a report, under oath or affirmation, stating the amount of coal mined by them, and from property owned and leased by them, and also the amount of coal purchased by them, or mined from property owned by them that may be
300 leased to other parties during the *proceeding* three months, and shall pay to the Commonwealth, within thirty days thereafter, a tax of four cents per ton upon each and every ton of anthracite coal so purchased or mined."

This act took effect 22d March, and on coal purchased or mined between that date and November 30, the Commonwealth received $102,936 59, as already stated, equal to four cents per ton on 2,573,414¾ tons for account of eight months and nine days of the official year. About five million tons of the product of the anthracite territory are liable to this tax of four cents per ton—a consideration which is simply nominal when offset against the extraordinary privileges conferred on the corporations to which it applies. The use, too, which is made by the three Lackawanna companies, in the New York City market, of the commercial privilege

which they enjoy from the State of Pennsylvania, for a tax of four cents per ton, is as much in conflict with individual *interprise*, and with fair play in trade, as the privilege is itself wrong in policy and principle. Its effect is practically subject Nature's magnificent gift of anthracite treasure to Pennsylvania to the domination of corporations owned and managed outside the State, thereby disturbing and destroying the fair and equitable relations which otherwise would subsist between the producers of coal and its consumers. The Lackawanna companies did not develop the coal trade of Pennsylvania. They are simply its commercial marplots, not its pioneers, the two of them most efficient for mischief to the general anthracite coal trade—considered as a Pennsylvania interest, which it is in nature, and ought to be in fact—being both of comparatively recent organization.

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As a precedent, the act of 22d March, 1867, is significant; but the practice of the specially-endowed companies since its passage, in continuing coal auctions in New York City purposely to exclude individual operators therefrom, etc., is conclusive testimony that, whilst the rate of taxation imposed per ton is insignificant as a revenue measure, it is also inoperative as a remedy for an evil which overshadows the anthracite coal trade, and which can be and ought to be dispelled.

United States Railroad and Mining Register, Thomas S. Fernon, editor and publisher. Office No. 423 Walnut street near Fifth street. Established May 31, 1856.

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The subscription price of the Register when mailed to Europe or elsewhere outside of the United States is four dollars per annum; within the United States three dollars per annum. The subscription price must in all cases accompany an order for the paper; otherwise it will not receive attention.

PHILADELPHIA, *Saturday, January* 18, 1868.

COAL TONNAGE OF CENTRAL RAILROAD OF NEW JERSEY.

OFFICE OF GENERAL FREIGHT AGENT N. J. CENT. R. R.
No. 103 *Liberty street, New York, Jan.* 14, 1868.

Statement of number of tons of coal transported over the Central Railroad of New Jersey during the year 1867.

	Tons.	Cwt.
Lehigh	513,383	09
Lackawanna	854,519	15
Total	1,367,903	04

Of this amount there was consigned to—

Lehigh	Port Johnson	193,299	07
	Elizabethport	206,391	13
	Points on line of road	113,692	09
Lackawanna	Elizabethport	843,667	10
	Points on line of road	10,852	05

The coal at Port Johnson was consigned to following parties:

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	Tons.	Cwt.
Rathburn, Stearns & Co.	1,659	17
W'm Hunter, jr.	1,765	11
Hunter & Rommel	1,400	06
Morris & Ely	1,255	04
A. Pardee & Co	99,772	06
Caldwell, Conant & Co	5,383	03
L. Audenried & Co	47,420	17
Honey Brook Coal Co	21,187	07
New Boston Coal & M'g Co	2,090	01
Day & Huddle	532	11
F. B. Spinola	4,149	15
Ashburton Coal Co	318	19
L. J. Belloni, jr	1,097	13
Tyler & Co	126	03
A. T. Stout & Co	5,117	16
J. E. Rathburn	41	18

The Lehigh coal at Elizabethport was consigned to following parties:

	Tons.	Cwt.
E. A. Packer & Co	46,344	08
L. Audenried & Co	8,405	04
Samuel Bonnell, jr	48,509	10
Day, Huddle & Co	22,329	02
John White	94	19
Wilkesbarre C. & I. Co	10,696	16
Randolph & Bro's	11,253	04
A. T. Stout & Co	25,903	14
Van Dusen, Lockman & Co	1,733	00
D. Van Liew	576	01
New Boston Coal & M'g Co	20,682	08
Hunter & Rommel	735	04
304 Mineral Springs	5,336	07
Honey Brook Coal Co	398	10
G. B. Linderman & Co	2,254	17
John Rommel, jr	819	14
J. B. Cochran	195	15
J. E. Rathburn	123	00
The Lackawanna coal at Elizabethport was consigned to Delaware, Lackawanna and Western Railroad Company	843,667	10

(The coal tonnage for 1867 shows an increase over 1866 of 77,654 tons. To Port Johnson, in 1867, the quantity of coal consigned was 193,299 tons, against 54,939 tons in 1866; increase to Port Johnson in 1867, 138,360 tons. This fact demonstrates that Port Johnson is destined to supercede Elizabethport as the principal shipping port of the Central Railroad Company of New Jersey, which from year to year provides an additional terminal accommodation for its immense present and vast prospective coal tonnage. A main road with four tracks, and as many feeders as there are fingers outspreading from the wrist, is the plan, position, programme of the Central New Jersey Railroad, and President Johnson is to be congratulated, as well for what is in prospect as for what is in possession.—ED. REG.)

305 United States Railroad and Mining Register, Thomas S. Fernon, editor and publisher. Office No. 423 Walnut street near Fifth street. Established May 31, 1856.

The subscription price of the Register when mailed to Europe or elsewhere outside of the United States is four dollars per annum; within the United States three dollars per annum. The subscription price must in all cases accompany an order for the paper; otherwise it will not receive attention.

PHILADELPAIA, *Saturday, February* 8, 1868.

II. Delaware, Lackawanna and Western Railroad from Delaware River, below the Water Gap, into the Lackawanna coal region, with a division north to Great Bend and a tributary stretching southwest to the forks of the Susquehanna.

SCHUY'KILL COAL TRADE.

Amount of coal transported by the Philadelphia and Reading Railroad and shipped by the Schuy'kill Canal, for the week ending Thursday, Feb. 6, 1868, *from points named, and for official and navigation year.*

306 Points of supply from railroads.	By Reading Railroad.		By Schuy'kill Canal.	
	1868. Week.	1867. Week.	1868. Week.	1867. Week.
	Tons. Cwt.	*Tons. Cwt.*	*Tons. Cwt.*	*Tons. Cwt.*
Total anthracite coal	35, 947 06	38, 746 01		
Total Harri'b'g bitum's coal	1, 928 07	3, 592 18		
Total all kinds for week, 1868	37, 875 13	42, 338 19		
Total all kinds for week, 1867	42, 338 19			
Increase				
Decrease	4, 463 06			
Philadelphia and Reading R. R. and Schuy'kill Canal.	For season. 1868.	For season. 1867.	For season. 1868.	For season. 1867.
Total all kinds for season, 1868	392, 268 04			
Total all kinds for season, 1867	300, 125 09			
Increase	92, 142 15			
Decrease				

LEHIGH COAL TRADE.

Quantity of coal shipped by the Lehigh Canal, and transported by the Lehigh Valley Railroad from points in the Lehigh Valley, for week ending Saturday, Feb. 1, 1868, *and for year by railroad and season of navigation by canal.*

From—	By Lehigh Valley R. R.		By Lehigh Navigation.	
	For week.	For season.	For week.	For season.
	Tons. Cwt.	*Tons. Cwt.*	*Tons. Cwt.*	*Tons. Cwt.*
Total, 1868	30, 601 09	305, 775 03		
Total, 1867	17, 942 16	133, 429 10		
	12, 658 13 Increase.	173, 345 13 Increase.		

307 LACKAWANNA COAL TRADE.

Delaware, Lackawanna and Western Railroad.—Coal transported over the Delaware, Lackawanna and Western Railroad, for four days, ending Saturday, Feb. 1, 1868, and for year commencing January 1, 1868.

	Week. 1868.	Year. 1868.	Week. 1867.	Year. 1867.
	Tons. Cwt.	*Tons. Cwt.*	*Tons. Cwt.*	*Tons. Cwt.*
Shipped north	9, 178 10	39, 814 14	6, 082 04	27, 012 05
" south	21, 303 01	90, 588 19	19, 599 15	87, 179 16
Total	30, 481 11	130, 396 13	25, 681 19	114, 192 01
	Inc., 4, 799 12	Inc., 16, 204 12		

Shamokin coal trade.

The United States Railroad and Mining Register, Thomas S. Fernon, editor and publisher. Office No. 423 Walnut street, near Fifth street. Established May 31, 1856.

The subscription price of the Register when mailed to Europe or elsewhere outside of the United States, is four dollars per annum; within the United States three dollars per annum. The subscription price must in all cases accompany an order for the paper; otherwise it will not receive attention.

PHILADELPHIA, *Saturday, February* 22, 1868.

308 The three Lackawanna companies make very small local deliveries on the first seventy miles of their respective routes, and altogether their consignments are light to places isolated from competition. The great bulk of their tonnage is delivered at tide-water ports.

SCHUY'KILL COAL TRADE.

Amount of coal transported by the Philadelphia and Reading Railroad and shipped by the Schuy'kill Canal, for week ending Thursday, Feb. 20, 1868, and for official and navigation year.

Points of supply from railroads.	By Reading Railroad.		By Schuy'kill Canal.	
	1868. Week.	1867. Week.	1868. Week.	1867. Week.
	Tons. Cwt.	*Tons. Cwt.*	*Tons. Cwt.*	*Tons. Cwt.*
Total anthracite coal	44, 902 12	29, 741 06		
Total Harrisb'g bitum. coal	2, 922 18	2, 593 04		
Total all kinds for week, 1868	47, 825 10	32, 334 10		
Total all kinds for week, 1867	32 334 10			
Increase	15, 491 00			
Decrease				
Philadelphia & Reading R. R. and Schuy'kill Canal.	**For season. 1868.**	**For season. 1867.**	**For season. 1868.**	**For season. 1867.**
Total all kinds for season, 1868	477, 687 03	380, 118 11		
Total all kinds for season, 1867	380, 118 11			
Increase	97, 568 12			
Decrease				

309 LEHIGH COAL TRADE.

Quantity of coal shipped by the Lehigh Canal, and transported by the Lehigh Valley Railroad, from points in the Lehigh Valley, for week ending Saturday, Feb. 15, 1868, *and for official year, by railroad, and season of navigation by canal.*

From—	By Lehigh Valley R. R.		By Lehigh Navigation.	
	For week.	For season.	For week.	For season.
	Tons. Cwt.	*Tons. Cwt.*	*Tons. Cwt.*	*Tons. Cwt.*
Total, 1868	28,949 00	366,069 18		
Total, 1867	28,699 05	193,176 04		
	249 16 Increase.	172,893 14 Increase.		

LACKAWANNA COAL TRADE.

Delaware, Lackawanna and Western Railroad.—Coal transported over the Delaware, Lackawanna and Western Railroad for week ending Saturday, February 15, 1868, *and for year commencing January* 1, 1868.

	Week. 1868.	Year. 1868.	Week. 1867.	Year. 1868.
	Tons. Cwt.	*Tons. Cwt.*	*Tons. Cwt.*	*Tons. Cwt.*
Shipped north	6,496 07	53,092 08	6,697 01	39,640 19
" south	18,381 03	129,021 13	22,990 09	133,745 05
Total	24,877 10	182,114 01	29,687 10	173,386 04
	Dec., 4,810 00	Inc., 8,727 17		

Pennsylvania Coal Company.—Shipments of Pittston coal by the Pennsylvania Coal Company for week ending Feb. 15, 1868, *and for year.*

	Week. 1868.	Year. 1868.	Week. 1867.	Year. 1867.
	Tons. Cwt.	*Tons. Cwt.*	*Tons. Cwt.*	*Tons. Cwt.*
310 By D. & H. Canal				
By Erie R. R.	11,064 19	75,582 15	64 02	30,344 04
	11,064 19	75,582 15	64 02	30,344 04
	Inc., 11,000 17	Inc., 44,238 41		

Shamokin coal trade.
Respondent's Exhibit No. 4. R. E. S., examiner, &c.

311 United States circuit court, southern district of New York.

THE PRESIDENT, MANAGERS, & DIRECTORS of the Delaware & Hudson Canal Company
against
HENRY C. CLARK.

It is hereby consented that the name of Samuel W. Peckham, esq., an attorney and counsellor at law at Providence, in the State of Rhode Island, be inserted in the commission in the above-entitled action directed to Benjamin T. Eames, esq., as commissioner, by an order of the court, to take and certify the deposition of in the place

and stead of the said Benjamin T. Eames, as such commissioner, and that an order to that effect may be entered accordingly.

Dated N. Y., June 14th, 1869.

OWEN, NASH & GRAY,
Sol'rs for Complainants.
FULLERTON, KNOX & RUDD,
Sol'rs for Defendants.

312 On reading the above consent, it is ordered that the name of Samuel W. Peckham, esq., an attorney and counsellor at law at Providence, in the State of Rhode Island, be inserted in the commission heretofore issued in this action to Benjamin T. Eames, esq., as commissioner therein, in his place and stead.

Dated N. Y., June 17th, 1869.

SAM'L BLATCHFORD.

313 Circuit court of the United States of America, 2d circuit, for the southern district of New York, in equity.

THE PRESIDENT, MANAGERS, AND COMPANY of the Delaware and Hudson Canal Company
ag'st
HENRY C. CLARK.

Interrogatories to be administered to Benjamin W. Persons, Stephen T. Sailsbury, Thomas N. Pearce, and William D. Pearce, of Providence, Rhode Island, witnesses to be examined under the annexed commission on behalf of the defendant in the above-entitled action.

First interrogatory. What is your name, age, residence, and occupation?

Second interrogatory. How long have you been connected with the coal business and at what place?

Third interrogatory. State whether or not you have ever purchased or sold the coal coming from the Delaware, Lackawanna and
314 Western Railroad, the Pennsylvania Coal Company, and the Delaware and Hudson Canal Company; if so, which coal in your estimation is the most valuable?

Fourth interrogatory. State whether or not the coals from all of the above companies come from what is termed the Lackawanna regions; under what name are they known, sold, and placed in the statistics of the trade. For how long a period have they been known and sold under said name?

Fifth interrogatory. What person or persons have acted as agent in the selling and delivering of the coal coming from the Delaware and Hudson Canal Company, in the city of Providence, during the past ten years?

Lastly. Do you know of any other matter or thing concerning the matters in question that may tend to the benefit and advantage of the defendant? If yea, declare the same fully and at large, as if you had been particularly interrogated concerning the same.

315 FULLERTON, KNOX & RUDD,
Def't's Att'ys, 11 Pine St., New York.

(Endorsed:) Circuit court. Hudson Canal Co. ag'st Henry C. Clark. Interrogatories.

316

317 Circuit court of the United States of America, 2d circuit for the southern district of New York, in equity.

THE PRESIDENT, MANAGERS, AND COMPANY OF the Delaware and Hudson Canal Company
ag'st
HENRY C. CLARK.

Interrogatories to be administered to George Beverly of Providence, Rhode Island, a witness to be examined under the annexed commission, on behalf of the defendant in the above-entitled action.

First interrogatory. What is your name, age, residence, and occupation?

Second interrogatory. How long have you been engaged in said occupation at said place?

Third interrogatory. State whether or not you ever painted a sign bearing the words, "Old Company Lackawanna coal;" if so, when did you paint it; where and what person or persons were connected
318 with employing you in painting said sign?

Fourth interrogatory. State whether or not the said sign is now in existence; if so, state, if you can, where it now is and in whose possession it has been for the past several years.

Fifth interrogatory. State whether or not the sign has been altered in any manner since you painted the same; if so, in what manner?

Sixth interrogatory. State whether or not you have the book or memorandum containing the original order for the sign; if so, attach the same or a copy thereof as part of your answer to this interrogatory.

Lastly. Do you know of any other matter or thing concerning the matters in question that may tend to the benefit and advantage of the defendant? If yea, declare the same fully and at large, as if you had been particularly interrogated concerning the same.

FULLERTON, KNOX & RUDD,
Def't's Att'ys, 11 Pine Street, New York.

319 Circuit court of the United States of America, 2d circuit, for the southern district of New York, in equity.

THE PRESIDENT, MANAGERS, AND COMPANY OF the Delaware and Hudson Canal Company
ag'st
HENRY C. CLARK.

Interrogatories to be administered to Thomas N. Pearce and William D. Pearce of Providence, Rhode Island, witnesses to be examined under the annexed commission on behalf of the defendant, in the above-entitled action.

First interrogatory. State whether or not there is a sign near your premises bearing the words "Old Company Lackawanna coal;" if so, what person or persons have occupied those premises for the past several years, and how long time has the said sign been upon the same?

FULLERTON, KNOX & RUDD,
Def't's Att'ys, 11 Pine Street, New York.

320 We hereby consent that the above interrogatories be taken subject to all legal exceptions and objections on the trial of the above-entitled action.

OWEN, NASH & GRAY,
Sol'rs for Compl'ts.
FULLERTON, KNOX & REED,
Sol'rs for Def't.

321 Circuit court of the United States of America, second circuit, southern district of New York—In equity.

Interrogatories to be administered by way of cross-examination to Thomas N. Pearce, William D. Pearce, Benjamin W. Persons, and Stephen T. Sailsbury, of the city of Providence, in the State of Rhode Island, witnesses to be produced, sworn, and examined under and by virtue of the annexed commission, before Benjamin T. Eames, esqr., counsellor at law, residing at the city of Providence aforesaid, commissioner therein named, in a certain cause now pending and at issue in the circuit court of the United States for the second circuit and southern district of New York, wherein the President, Managers, and Company of the Delaware and Hudson Canal Company are complainants and Henry C. Clark is defendant, on the part and behalf of the said complainants.

First cross-interrogatory. Is your business wholesale or retail;
322 from whom do you purchase coal; how many tons of coal do you sell in a year; what is the average profit on the coal sold by you; about how many tons of coal does the defendant, Clark, sell in a year; do you know or have you heard him say what is the average profit on the coal sold? If so, state as near as you can what such profit is.

Second cross-interrogatory. If you say, you purchase coal from the Delaware, Lackawanna & Western Railroad Company, then state by what name that coal is sold to and purchased by you; by what name do you sell it; how much have you bought and sold of that coal yearly for the last four or five years; how much, if any, have you bought from the Pennsylvania Coal Company during the same time; by what name is the Pennsylvania Company's coal bought and sold by you; have you ever purchased any, and if so, how much, and from whom, of the Delaware and Hudson Canal Company's coal; how do you know which is the most valuable; when you speak of value what do you mean—the one that commands the highest price in the market, or how otherwise?

323 Third cross-interrogatory. If, in answer to the fourth direct, you say that the coal of the companies all come from what is called the Lackawanna regions, then state how you know that fact. Have you ever visited the mines of any, and which of those companies, and for what purpose, and when? If you undertake to state by what name they are known, sold, or placed on the statistics of trade, then state what statistics of trade you refer to, by whom, and by what name or title, and when and where are such statistics published. Have you ever read such statistics; if so, when and where, and annex a copy thereof to your deposition?

Fourth cross-interrogatory. By what name do you sell the Scranton coal, which you purchase from the Delaware, Lackawanna & Western Railroad Company; by what name do you sell Pittston coal, or the coal which you purchase from the Pennsylvania Coal Company; how long have you sold the same by such names; have you ever sold either

of those classes of coal by the simple name of "Lackawanna coal;" have you ever sold it as and for the coal produced by the Dela-
324 ware and Hudson Canal Company; if so, when and how long have you so sold it, and how, and to whom sold?

Fifth cross-interrogatory. Do you know, or have you ever heard the defendant, Clark, say that the Delaware, Lackawanna & Western Railroad Company and the Pennsylvania Coal Company, or either, and which of them, have in any way promised or agreed with the defendant to defray, in whole or in part, the expenses of the litigation involved in this suit? If so, state all you know or have heard the defendant, Clark, state upon this subject.

OWEN, NASH & GRAY,
Complainants' Sol'rs, 72 Wall St., New York.

We hereby consent that the above cross-interrogatories be taken, subject to all legal exceptions and objections on the trial of the above-entitled action.

OWEN, NASH & GRAY,
Sol'rs for Compl'ts.
FULLERTON, KNOX & RUDD,
Sol'rs for Def't.

325 On reading the annexed stipulation, it is ordered that a commission issued in the above-entitled action, directed to Benjamin T. Eames, counsellor at law, at Providence, Rhode Island, and that the same be taken in accordance with the consent endorsed on the interrogatories and cross-interrogatories in said action, May 12th, 1869.

SAM'L BLATCHFORD, *D. J.*

(Endorsed:) Circuit court of the United States, southern district of New York. The President, Managers, and Company of the Delaware & Hudson Canal Company vs. Henry C. Clark. Cross-interrogatories. Copy. Owen, Nash & Gray, sol'rs for complainants, 72 Wall st., New York. To Fullerton, Knox & Rudd, sol'rs for def't.

326

327 Circuit court of the United States, for the southern district of New York.

THE PRESIDENT, MANAGERS, AND COMPANY of the Delaware and Hudson Canal Company *ag'st* HENRY C. CLARK. } In equity.

We hereby consent that a commission may issue in this action, directed to Benjamin T. Eames, an attorney and counsellor at law, at Providence, Rhode Island, authorizing him to examine on oath Benjamin W. Persons, Stephen T. Sailsbury, Thomas M. Pearce, William D. Pearce, and George Beverly, as witnesses on the part of the defendant on interrogatories to be annexed to the said commission, and to take and certify the deposition of such witnesses, and to return the same according to the directions to be given with such commission, said interrogatories to be served upon the solicitors for the complainants within 5 days from date, and that said complainants be at liberty to join in said commission, and to have five days after such service of interrogatories aforesaid to

328 serve cross-interrogatories, which shall also be annexed to said commission, and propounded to said witnesses, and the answers thereto taken and certified in the same manner as to the direct interrogatories; and an order to the foregoing effect may be entered.

Dated April 23d, 1869.

OWEN, NASH & GRAY,
Sol'rs for Complainants.
FULLERTON, KNOX & RUDD,
Sol'rs for Def't.

(Endorsed:) Circuit court of the United States. Hudson Canal Co. ag'st Henry C. Clark. Consent that commission issue.

329 Depositions of witnesses produced, sworn, and examined the twentieth and twenty-second days of July and on the twenty-fourth day of September, in the year one thousand eight hundred and sixty-nine, at the city of Providence, in the State of Rhode Island, under and by virtue of a commission issued out of the circuit court of the United States for the southern district of New York, in a certain cause therein depending and at issue, wherein the President, Managers, and Company of the Delaware and Hudson Canal Company are plaintiffs, and Henry C. Clark is defendant, as follows:

THOMAS N. PEARCE, of Cranston, in the State of Rhode Island, coal-dealer, aged thirty-seven years and upwards, being duly and publicly sworn, pursuant to the directions hereto annexed, and examined on the part of the defendant, doth depose and say as follows:

First. To the first interrogatory he saith: My name is Thomas N. Pearce; aged thirty-seven years; reside in Cranston, R. I.; occupation, coal-dealer in the city of Providence.

Second. To the second interrogatory he saith: Most of the time
330 for twenty years in the city of Providence.

Third. To the third interrogatory he saith: I have purchased coal of all those companies, except the Pennsylvania Coal Company, and I consider the Pittston coal most valuable for steam purposes, and the other companies' coal for family use.—(SAM'L W. PECKHAM, *Commissioner.*)

Fourth. To the fourth interrogatory he saith: They do come from the Lackawanna regions, and they are known, sold, and placed in the statistics of the trade as Lackawanna coal, and they have been known and sold under that name for ten years or more.

Fifth. To the fifth interrogatory he saith: Manchester, Hopkins & Company.

Lastly. To the last interrogatory he saith: No.

First. To the first additional interrogatory he saith: There is such a sign there. Manchester & Hopkins and O. W. and E. A. Hopkins have occupied those premises for the past several years. The sign has been there six or seven years.

First. To the first cross-interrogatory he saith: My business is both wholesale and retail. I purchase coal of Manchester, Hopkins &
331 Co., Henry C. Clark, John H. Ormsbee, the Delaware, Lackawanna and Western Railroad Company, and other Philadelphia coal-dealers. I sell from five to ten thousand tons a year. The average profit is from twenty-five to fifty cents a ton. I don't know how many tons of coal the def't, Clark, sold in a year. I don't know, nor have I

heard him say, what is the average profit on the coal sold.—(SAM'L W. PECKHAM, *Commissioner.*)

Second. To the second cross-interrogatory he saith: It is sold to me as Scranton coal. I sell it sometimes as white ash, sometimes as Lackawanna, sometimes as Scranton. I can't say how much I have purchased of that coal. I don't keep my sales seperate. It all goes in under the head of white-ash coal. I have bought none from the Pennsylvania Coal Company for several years. I don't deal in it. I have purchased the Delaware and Hudson Canal Company's coal. I couldn't say what quantity. What I bought, I bought of Manchester, Hopkins & Co. I judge which is the most valuable from observation—from the demand for it. People prefer the Pittston coal for steam purposes and the other for family use.

332 Third. To the third cross-interrogatory he saith: I know it comes from there from the statistics of the trade and general knowledge, never having visited there. The Miners' Journal and the United States Mining Register—the former published at Pottsville, and the latter at Philadelphia—I have read them in my office, and other places where coal business is done. I have no copy at hand to annex.—(SAM'L W. PECKHAM, *Commissioner.*)

Fourth. To the fourth cross-interrogatory he saith: Sometimes white ash, sometimes Lackawanna, and sometimes Scranton. I don't sell any Pittston coal. I have sold them by such names ever since I have been in the business. Yes; I have sold the coal of the Delaware, Lackawanna and Western Railroad Company by the simple name of Lackawanna coal from the Lackawanna coal regions. I have not sold Scranton coals as coming from the Delaware and Hudson Canal Company.

Fifth. To the fifth cross-interrogatory he saith: No; I have never heard him say anything of the kind.

THOMAS N. PEARCE.

Examination taken, reduced to writing, and by the witness subscribed and sworn to this 20th day of July, 1869, before—

SAM'L W. PECKHAM,
Commissioner.

333 STEPHEN S. SALISBURY, of the city of Providence, coal-dealer, aged fifty-three years and upwards, being duly and publicly sworn, pursuant to the directions hereto annexed, and examined on the part of the defendant, doth depose and say as follows:

To the first interrogatory he saith: Stephen S. Salisbury; aged fifty-three years; residence, city of Providence; occupation, coal-dealer.—(SAM'L W. PECKHAM, *Commissioner.*)

Second. To the second interrogatory he saith: Twenty-seven years, in Providence.

Third. To the third interrogatory he saith: I have purchased and sold the coal of the Delaware, Lackawanna and Western Railroad Company, and of the Delaware and Hudson Canal Company. I don't know that there is any difference.

Fourth. To the fourth interrogatory he saith: Yes; it does. They are known under the names of Pittston, Lackawanna, and Scranton, and have been known and sold under said names for the last ten or twelve years.

Fifth. To the fifth interrogatory he saith: Manchester & Hopkins and Walter Lawton.

Lastly. To the last interrogatory he saith: I do not.

334 First. To the first cross-interrogatory he saith: Both. Delaware, Lackawanna and Western Railroad Company mostly, and from others. I sell from five to ten thousand tons a year. My profit is sometimes more and sometimes less. I never averaged it. I don't know how many tons of coal the defendant, Clark, sells in a year; I never heard him say. I don't know, and I never heard him say, what the average profit is on the coal he sells.—(SAM'L W. PECKHAM, *Commissioner.*)

Second. To the second cross-interrogatory he saith: I buy it as Scranton coal coming from the Lackawanna Valley or regions. I sell it for Lackawanna, Scranton, or gray ash, or white ash. I can't say how much I have bought and sold for the last four or five years. I have not bought any from the Pennsylvania Coal Company during that time. I purchased some of the Delaware and Hudson Canal Company's coal from Jackson & Clark; and but one cargo of them. I don't know as there is any difference in the value.

Third. To the third cross-interrogatory he saith: I know from the statistics of the coal trade. I have been in Schuy'kill, but not
335 in the Lackawanna regions. The Miners' Journal, published in Pottsville. I have read them in my office within a year. I have no copy to annex.

Fourth. To the fourth cross-interrogatory he saith: Scranton, Lackawanna, grey, or white ash. I don't sell any Pittston coal. I have sold Scranton by those names for the last ten or twelve years. I have sold Scranton by the simple name of Lackawanna coal. I have never sold it as and for the coal produced by the Delaware & Hudson Canal Company.

Fifth. To the fifth cross-interrogatory he saith: No, sir.

STEPHEN S. SALSBURY.

Examination taken, reduced to writing, and by the witness subscribed and sworn to this 20th day of July, 1869, before—

SAM'L W. PECKHAN,
Commissioner.

WILLIAM D. PIERCE, of the city of Providence, coal-dealer, aged forty-six years and upwards, being duly and publicly sworn, pursuant to the directions hereto annexed, and examined on the part of the defendant, doth depose and say as follows:—(SAM'L W. PECKHAM, *Commissioner.*)

336 First. To the first interrogatory he saith: William D. Pearce; about forty-six years of age; residence, city of Providence; occupation, coal-dealer.

Second. To the second interrogatory he saith: About fourteen years, on Dorrance street, in the city of Providence.

Third. To the third interrogatory he saith: I have purchased the coal coming from all three of them. I have not purchased coal from the Pennsylvania Coal Company for some time, and therefore do not know much about it. As to the other two, I don't think there is much difference.

Fourth. To the fourth interrogatory he saith: I understand, from what I hear and what I see in the papers, that they do. The Pennsylvania Coal Company's coal is called Pittston coal. The Delaware and Hudson Canal Company call theirs Lackawanna. The Delaware, Lackawanna and Western Railroad, I believe, advertize theirs as Scranton coal, coming from the Lackawanna regions. I never knew them *them* to be sold under any other names, to my recollection.

heard him say, what is the average profit on the coal sold.—(SAM'L W. PECKHAM, *Commissioner.*)

Second. To the second cross-interrogatory he saith: It is sold to me as Scranton coal. I sell it sometimes as white ash, sometimes as Lackawanna, sometimes as Scranton. I can't say how much I have purchased of that coal. I don't keep my sales seperate. It all goes in under the head of white-ash coal. I have bought none from the Pennsylvania Coal Company for several years. I don't deal in it. I have purchased the Delaware and Hudson Canal Company's coal. I couldn't say what quantity. What I bought, I bought of Manchester, Hopkins & Co. I judge which is the most valuable from observation—from the demand for it. People prefer the Pittston coal for steam purposes and the other for family use.

332 Third. To the third cross-interrogatory he saith: I know it comes from there from the statistics of the trade and general knowledge, never having visited there. The Miners' Journal and the United States Mining Register—the former published at Pottsville, and the latter at Philadelphia—I have read them in my office, and other places where coal business is done. I have no copy at hand to annex.—(SAM'L W. PECKHAM, *Commissioner.*)

Fourth. To the fourth cross-interrogatory he saith: Sometimes white ash, sometimes Lackawanna, and sometimes Scranton. I don't sell any Pittston coal. I have sold them by such names ever since I have been in the business. Yes; I have sold the coal of the Delaware, Lackawanna and Western Railroad Company by the simple name of Lackawanna coal from the Lackawanna coal regions. I have not sold Scranton coals as coming from the Delaware and Hudson Canal Company.

Fifth. To the fifth cross-interrogatory he saith: No; I have never heard him say anything of the kind.

THOMAS N. PEARCE.

Examination taken, reduced to writing, and by the witness subscribed and sworn to this 20th day of July, 1869, before—

SAM'L W. PECKHAM,
Commissioner.

333 STEPHEN S. SALISBURY, of the city of Providence, coal-dealer, aged fifty-three years and upwards, being duly and publicly sworn, pursuant to the directions hereto annexed, and examined on the part of the defendant, doth depose and say as follows:

To the first interrogatory he saith: Stephen S. Salisbury; aged fifty-three years; residence, city of Providence; occupation, coal-dealer.—(SAM'L W. PECKHAM, *Commissioner.*)

Second. To the second interrogatory he saith: Twenty-seven years, in Providence.

Third. To the third interrogatory he saith: I have purchased and sold the coal of the Delaware, Lackawanna and Western Railroad Company, and of the Delaware and Hudson Canal Company. I don't know that there is any difference.

Fourth. To the fourth interrogatory he saith: Yes; it does. They are known under the names of Pittston, Lackawanna, and Scranton, and have been known and sold under said names for the last ten or twelve years.

Fifth. To the fifth interrogatory he saith: Manchester & Hopkins and Walter Lawton.

Lastly. To the last interrogatory he saith: I do not.

334 First. To the first cross-interrogatory he saith: Both. Delaware, Lackawanna and Western Railroad Company mostly, and from others. I sell from five to ten thousand tons a year. My profit is sometimes more and sometimes less. I never averaged it. I don't know how many tons of coal the defendant, Clark, sells in a year; I never heard him say. I don't know, and I never heard him say, what the average profit is on the coal he sells.—(SAM'L W. PECKHAM, *Commissioner.*)

Second. To the second cross-interrogatory he saith: I buy it as Scranton coal coming from the Lackawanna Valley or regions. I sell it for Lackawanna, Scranton, or gray ash, or white ash. I can't say how much I have bought and sold for the last four or five years. I have not bought any from the Pennsylvania Coal Company during that time. I purchased some of the Delaware and Hudson Canal Company's coal from Jackson & Clark; and but one cargo of them. I don't know as there is any difference in the value.

Third. To the third cross-interrogatory he saith: I know from the statistics of the coal trade. I have been in Schuy'kill, but not
335 in the Lackawanna regions. The Miners' Journal, published in Pottsville. I have read them in my office within a year. I have no copy to annex.

Fourth. To the fourth cross-interrogatory he saith: Scranton, Lackawanna, grey, or white ash. I don't sell any Pittston coal. I have sold Scranton by those names for the last ten or twelve years. I have sold Scranton by the simple name of Lackawanna coal. I have never sold it as and for the coal produced by the Delaware & Hudson Canal Company.

Fifth. To the fifth cross-interrogatory he saith: No, sir.

STEPHEN S. SALSBURY.

Examination taken, reduced to writing, and by the witness subscribed and sworn to this 20th day of July, 1869, before—

SAM'L W. PECKHAN,
Commissioner.

WILLIAM D. PIERCE, of the city of Providence, coal-dealer, aged forty-six years and upwards, being duly and publicly sworn, pursuant to the directions hereto annexed, and examined on the part of the defendant, doth depose and say as follows:—(SAM'L W. PECKHAM, *Commissioner.*)

336 First. To the first interrogatory he saith: William D. Pearce; about forty-six years of age; residence, city of Providence; occupation, coal-dealer.

Second. To the second interrogatory he saith: About fourteen years, on Dorrance street, in the city of Providence.

Third. To the third interrogatory he saith: I have purchased the coal coming from all three of them. I have not purchased coal from the Pennsylvania Coal Company for some time, and therefore do not know much about it. As to the other two, I don't think there is much difference.

Fourth. To the fourth interrogatory he saith: I understand, from what I hear and what I see in the papers, that they do. The Pennsylvania Coal Company's coal is called Pittston coal. The Delaware and Hudson Canal Company call theirs Lackawanna. The Delaware, Lackawanna and Western Railroad, I believe, advertize theirs as Scranton coal, coming from the Lackawanna regions. I never knew them *them* to be sold under any other names, to my recollection.

Fifth. To the fifth interrogatory he saith: Manchester & Hopkins & Co. They sell it all, I suppose; they are agents. There is no one else that I know of.

337 Lastly. To the last interrogatory he saith: No, sir.—(SAM'L W. PECKHAM, *Commissioner.*)

First. To the first additional interrogatory he saith: Yes; there is. In the first place, I understood the Delaware and Hudson Canal Co. occupied it; then Mr. G. W. Pomeroy. There have been a number of changes. O. W. and E. A. Hopkins occupy it now. I should think the sign had been there seven or eight years.

First. To the first cross-interrogatory he saith: I purchase coal from Manchester & Hopkins, Henry C. Clark, and of different parties in Philadelphia. I sell three or four thousand tons in a year. I couldn't tell the average profit. I don't know about how many tons of coal the defendant, Clark, sells in a year. I do not know, nor have I heard him say, what is the average profit on the coal he sells.

Second. To the second cross-interrogatory he saith: I sell it for Scranton coal, coming from the Lackawanna regions. That's the way they advertise it. They sell it as Scranton coal. I don't know how much, probably 1,500 tons. I have not bought any from the Pennsylvania Coal Company for quite a number of years. I have bought the Delaware and Hudson Canal Co.'s coal from Manchester & Hop-

338 kins, from four hundred to seven hundred tons a year. I don't know much difference in the coal.

Third. To the third cross-interrogatory he saith: I understand it from what I hear and what I see in the papers. I have never visited any of the mines. I refer to the Miners' Journal, published at Pottsville. I take the Miners' Journal and read it. I leave a copy of the Miners' Journal with the commissioner, and also a copy of the United States Railroad and Mining Register to be annexed to my deposition.—(SAM'L W. PECKHAM, *Commissioner.*)

Fourth. To the fourth cross-interrogatory he saith: I sell most of it as white-ash coal. I have sometimes sold it as Lackawanna coal. I have not sold any of the Pennsylvania Coal Company's coal for some time. I have sold Scranton coal by those names for the last ten years. I should think I have sold it by the simple name of Lackawanna coal. I have never sold it as and for the coal produced by the Delaware and Hudson Canal Co.—(SAM'L W. PECKHAM, *Commissioner.*)

Fifth. To the fifth cross-interrogatory he saith: No.

W'M D. PIERCE.

Examination taken and reduced to writing and by the witness subscribed and sworn to this 22d day of July, 1869, before—

SAM'L W. PECKHAM,
Commissioner.

339 GEORGE BEVERLY, of the city of Providence, formerly sign-painter, aged fifty-seven years and upwards, being duly and publicly sworn pursuant to the directions hereto annexed, and examined on the part of the defendant, doth depose as follows:

First. To the first interrogatory he saith: George Beverly; age, fifty-seven; residence, 51 John street, Providence, Rhode Island; occupation, till within the past year, that of sign-painting.

Second. To the second interrogatory he saith: Some fourteen years, down to the time specified in the answer above, and some eighteen

years in other parts of this city—in all some thirty-two years.—(SAM'L W. PECKHAM, *Commissioner.*)

Third. To the third interrogatory he saith: Some twelve or thirteen years ago (I cannot fix the exact date) a man was introduced to me at my shop by one of the firm of Manchester & Hopkins, coal-dealers of this city, (I am not sure which of the firm, but think it was Hopkins,) by the name of Lawton. This Mr. Lawton bargained with me to make, paint, and put up a sign, which work I performed, and was paid for by him, reading, as appears on my order-book as follows:

Old

Company

Lackawanna

340 Coal

Office.

Walter Lawton,

Agent.

Fourth. To the fourth interrogatory he saith: For several years past the sign in question has been on a building occupied by the firm of Manchester & Hopkins, the firm alluded to in answer to question third. It is now on the same building and place, which building is now occupied by the firm of O. W. & E. A. Hopkins, No. 180 & 184 Dyer street, Providence, Rhode Island.

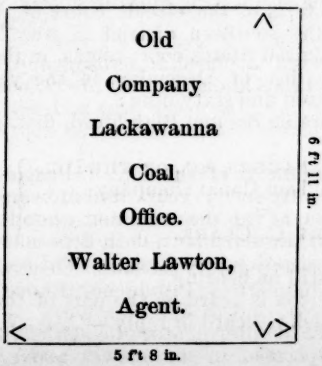
Fifth. To the fifth interrogatory he saith: The sign in question has been cut off at the bottom, and now reads, as follows:

Old Company

Lackawanna

Coal.

Sixth. To the sixth interrogatory he saith: I have now the order-book wherein I took directions to work. In it is the original order for the sign in question, as follows:



341 I have sometimes by permission of parties employing me varied somewhat from written orders for the sake of symmetry in arranging work on signboards. I may have done so in the case of the last four words in the above-written order. I cannot distinctly remember as to this particular, but can positively say; that what there is still left of the sign in question is the same that I painted for this Mr. Lawton at the time specified in answer to question third. It is the same signboard and they are the same letters.—(SAM'L W. PECKAM, *Commissioner.*)

Lastly: To the last interrogatory he saith: No.—(SAM'L W. PECKHAM, *Commissioner.*)

GEORGE BEVERLY.

Examination taken, reduced to writing, and by the witness subscribed and sworn to this 24th day of September, 1869.

Before—

SAM'L W. PECKHAM,
Commissioner.

(Endorsed:) Opened and filed in open court this 25 Nov., 1869.

342

343 At a stated term of the circuit court of the United States of America, for the southern district of New York, in the second circuit, held at the United States court-rooms, in the city of New York, on Thursday the 16th day of December, in the year of our Lord one thousand eight hundred and sixty-nine:

Present, the Honorable Samuel Blatchford, dist. judge.

THE PRESIDENT, MANAGERS, &C., OF THE DELAWARE AND HUDSON CANAL COMPANY
vs.
HENRY C. CLARK.

This cause coming on to be heard on the pleadings and proofs, Mr. E. H. Owen is heard on the part of the complainants.

344

345 At a stated term of the circuit court of the United States of America, for the southern district of New York, in the second circuit, held at the United States court-rooms, in the city of New York, on Friday the 17th day of December, in the year of our Lord one thousand eight hundred and sixty-nine:

Present, the Honorable Samuel Blatchford, dist. judge.

THE PRESIDENT, MANAGERS, &C., OF THE DELAWARE AND HUDSON CANAL COMPANY
vs.
HENRY C. CLARK.

This cause being still on hearing,
Mr. William Fullerton is heard on the part of the defendant.
Mr. Stephen P. Nash is heard in reply.—C. A. V.

346

347 At a stated term of the circuit court of the United States of America, for the southern district of New York, in the second circuit, held at the United States court-rooms, in the city of New York, on Tuesday the 15th day of February, in the year of our Lord one thousand eight hundred and seventy:

Present, the Honorable Samuel Blatchford, dist. judge.

THE PRESIDENT, MANAGERS, &C., OF THE DELAWARE and Hudson Canal Company
vs.
HENRY C. CLARK.

The above action coming on to be heard, and after hearing Messrs. Owen, Nash & Gray, solicitors for the plaintiffs, and Messrs. Fullerton, Knox & Rudd, solicitors for the defendant, and after due deliberation thereon being had, it is adjudged and decreed that the plaintiffs' bill of complaint in the above-entitled action be, and the same is hereby, dismissed with costs of said action amounting to the sum of $422 75 as taxed by the clerk of this court, and that the defendant have a decree and execution therefor against the said plaintiffs.

(S'd) SAM'L BLATCHFORD.

348

349 Circuit court of the United States for the southern district of New York, in the second circuit.

THE PRESIDENT, MANAGERS, AND COMPANY of the Delaware and Hudson Canal Company, appellants,
vs.
HENRY C. CLARK. } In equity.

To the Honorable the Supreme Court of the United States:

The appeal of the President, Managers, and Company of the Delaware and Hudson Canal Company, the above-named appellants, respectfully showeth that on the 2d day of January, 1867, the above-named The President, Managers, and Company of the Delaware and Hudson Canal Company filed their bill of complaint in the circuit court of the United States for the southern district of New York, in the second circuit, against the above-named Henry C. Clark, in a suit in equity, to enjoin and restrain the said Henry C. Clark from using the words "Lackawanna coal" to designate coal sold by him not produced by the
350 said complainants, and for an accounting and payment by him of the profits realized by such use of said words, and that a subpœna issued out of said circuit court was served on said Clark on the 3d day of January, 1867.

That the said defendant filed his answer to said bill of complaint, and the complainants replied thereto, whereupon such proceedings were had in the said cause, that on the fifteenth day of February, 1870, a final decree was entered in said circuit court, wherein it was in substance adjudged that the said bill of complaint be dismissed with costs, which said decree is, as these appellants are advised, erroneous, and ought to be reversed.

Wherefore these appellants appeal from the whole of said decree of said circuit court to the Supreme Court of the United States, and re-

spectfully pray that the said decree of the said circuit court, and the bill of complaint, answer, replication, depositions, evidence, and proceedings in the said cause may be sent to the Supreme Court of the United States without delay, and that the said Supreme Court will proceed to hear the cause anew, and that the said decree of the circuit court and every part thereof may be reversed or such other decree made as to the said Supreme Court shall seem just.

Dated New York, February 17th, 1870.

351 The President, Managers, and Company of the Delaware and Hudson Canal Company,

By OWEN, NASH & GRAY,
Their Attorneys.

OWEN, NASH & GRAY,
Sol'rs for Appellants.

(Endorsed:) Circuit court of the United States for the southern district of New York. In equity. The President, Managers, & Company of the Delaware & Hudson Canal Company vs. Henry C. Clark. Appeal to Supreme Court. Owen, Nash & Gray, sol. for appellants.

Allowed—

L. B. WOODRUFF,
Circuit Judge.

Filed Feb'y 21, 1870.

352

353 Circuit Court of the United States of America for the southern district of New York, in the second circuit.

Bond on appeal.

THE PRESIDENT, MANAGERS, AND COMPANY of the Delaware and Hudson Canal Company, appellants,
vs.
HENRY C. CLARK, APPELLEE.
} In equity.

Know all men by these presents, that we, George Talbot Olyphant, of Westchester, in the State of New York, and Charles P. Hartt, of the city of New York, are held and firmly bound unto the above-named Henry C. Clarke, appellee, in the sum of one thousand dollars to be paid to the said appellee, for the payment of which well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally firmly by these presents, sealed with our seals, and dated the seventeenth day of February, in the year of our Lord one thousand eight hundred and seventy.

Whereas the above-named appellants have prosecuted an appeal to the Supreme Court of the United States, at the city of Washington, in the District of Columbia, to reverse the decree rendered in the above-entitled suit, by the judge of the circuit court of the United States for the southern district of New York:

Now, therefore, the condition of this obligation is such, that if the above-named appellants shall prosecute their appeal to effect and

answer all damages and costs if they fail to make their appeal good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

GEO. TALBOT OLYPHANT. [L. S.]
CHARLES P. HARTT. [L. S.]

Sealed and delivered, and taken and acknowledged, this 17th day of February, 1870, before me.

EDWARD L. OWEN,
U. S. Commissioner.

354 UNITED STATES OF AMERICA,
Southern District of New York, ss:

Geo. Talbot Olyphant and Charles P. Hartt, being duly sworn, depose and say, and each for himself says, that he is worth the sum of two thousand dollars over and above all his just debts and liabilities.

GEO. TALBOT OLYPHANT.
CHARLES P. HARTT.

Sworn to this 17th day of February, A. D. 1870, before me.

EDWARD L. OWEN,
U. S. Commissioner.

(Indorsed:) Vol. , page . U. S. circuit court. The President, Managers, & Company of the Delaware & Hudson Canal Company vs. Henry C. Clark. Bond for costs on appeal. Owen, Nash & Gray, sol'rs for appellants. Filed this 21st day of February, 1870.

Approved Feb'y 21st, 1870.

L. B. WOODRUFF,
Circuit Judge.

355 By the Honorable Lewis B. Woodruff, one of the judges of the circuit court of the United States for the southern district of New York, in the second circuit, to Henry C. Clark, appellee:

Whereas, The President, Managers, and Company of the Delaware and Hudson Canal Company lately appealed to the Supreme Court of the United States from a decree rendered in the circuit court of the United States for the southern district of New York, in the second circuit, made in favor of you, in a suit brought by The President, Managers, and Company of the Delaware and Hudson Canal Company against you, the said Henry C. Clark, and has filed the security required by law:

You are therefore hereby cited to appear before the said Supreme Court of the United States, at the city of Washington, on the first Monday of December next, to do and receive what may appertain to be done in the premises.

Given under my hand at the city of New York, in the second circuit, the 21st day of February, in the year of our Lord one thousand eight hundred and seventy, and of the independence of the United States the ninety-fourth.

L. B. WOODRUFF,
Circuit Judge.

356 (Endorsed:) Supreme Court of the United States. The President, Managers, and Company of the Delaware and Hudson

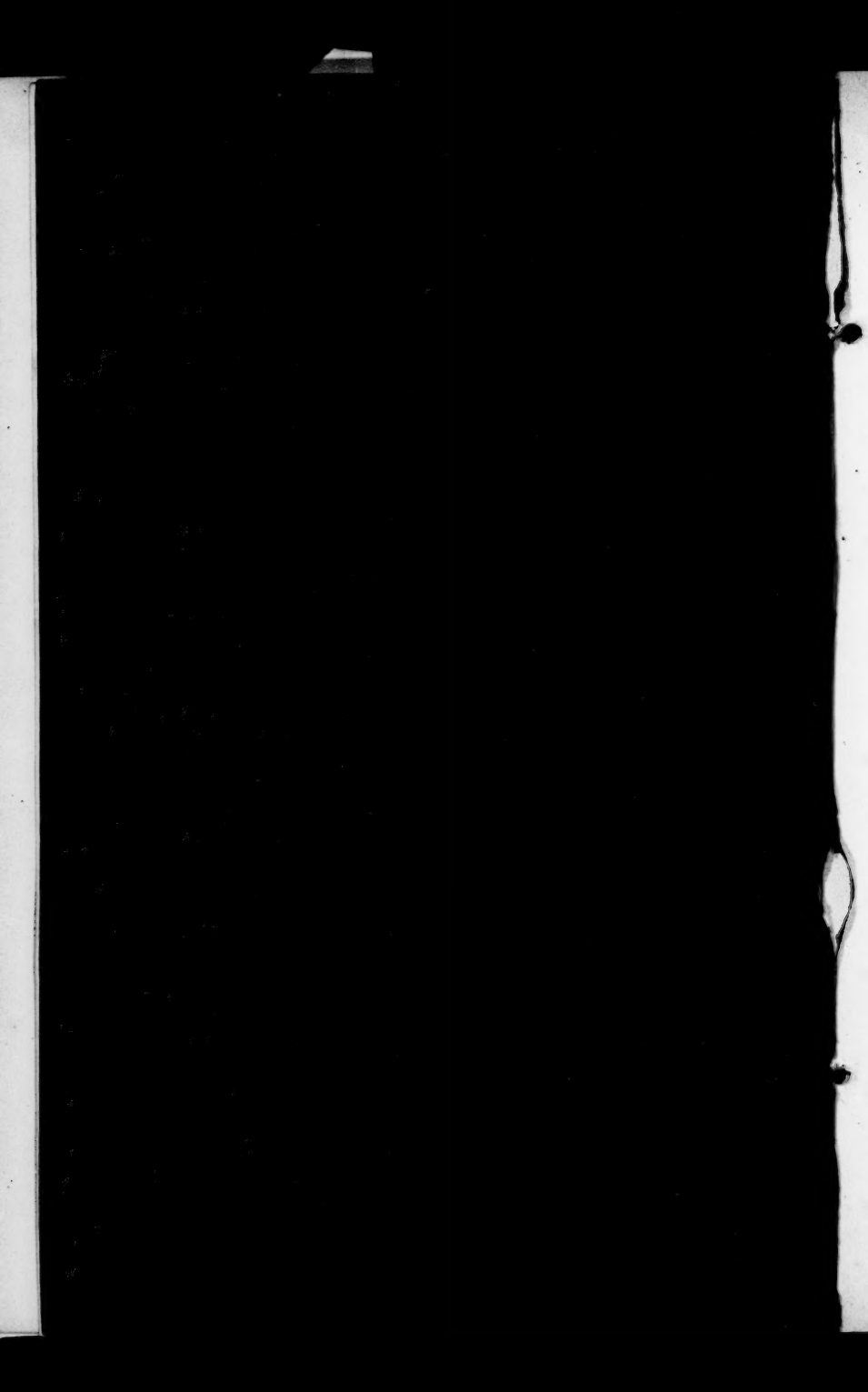
Canal Company, appellants, vs. Henry C. Clark, appellee. Citation on appeal. Owen, Nash & Gray, sol'rs for app'l'ts.

Due and timely service of the within citation admitted, February 21st, 1870.

FULLERTON, KNOX & RUDD,
Sol'rs for Appellee.

Filed February 21, 1870.

(Indorsement on cover:) No. 293. The President, Managers, and Company of the Delaware and Hudson Canal Company, appellant, vs. Henry C. Clark. S. New York C. C. U. S. Filed 17th November, 1870.



Evening Post Steam Presses, 41 Nassau Street, cor. Liberty, N. Y.

Supreme Court

OF THE UNITED STATES.

THE PRESIDENT, MANAGERS AND COMPANY OF THE DELAWARE AND HUDSON CANAL COMPANY,
Appellants,

vs:

HENRY C. CLARK,
Appellee.

This is an appeal from a decree of the Circuit Court for the Southern District of New York.

The bill was filed by the appellants, a corporation created by and existing under the laws of the State of New York, against the defendant, a citizen of the State of Rhode Island, to restrain him from using their trade-mark, adopted and used in the sale of their anthracite coal. The defendant appeared and filed his answer to the bill, to which the appellants replied, and thereupon proofs were taken by the respective parties, and the same having been closed the cause was brought to a hearing before the Circuit Court on the pleadings and

proofs, and after argument the bill was dismissed, with costs.

Abstract of the Pleadings.

The bill (*fol.* 3) states the incorporation of the Company. That in 1825, under the powers and franchise which the appellants possessed, they purchased and became seized of a large quantity of coal lands in the State of Pennsylvania, and that in order to mine and bring the coal therein to market, they, at great expense, constructed a canal, called the Delaware and Hudson Canal, extending from Rondout, on the Hudson River, to Honesdale, in Pennsylvania, together with a connecting railroad therefrom to their coal lands. That in or about the year 1828, when they commenced bringing their coal to market, they devised and adopted the name of "Lackawanna Coal" as a special, particular and distinctive name or *trade-mark* for their coal, by which they could introduce the same to the favorable notice of dealers and consumers, as the product of their mines, and thereby distinguish it from the coal of other parties. That when the name or *trade-mark* was so adopted and appropriated, the word "Lackawanna" had never been adopted or applied in combination with the word "coal;" that they were the first so to adopt and use it, and that ever since such adoption and use their coal has been called and known in market, and bought and sold under and by that name and not by any other. That by continued exertions and at large expense they have established a high reputation for their coal, and the same is sought for, and commands a higher price than almost any other kind of anthracite coal; that the trade therein and the consumption thereof have been gradually increasing, so that in 1866 the sale thereof amounted to over 1,300,000 tons, and it is believed that such sales will increase, unless prevented by

the wrongful acts of the defendant. That the appellants have coal yards, &c., wherein they keep their "Lackawanna coal" for sale, and they also sell to coal merchants, who advertise and sell by that name, and that in these ways profits have been derived; that for a number of years past the appellants have sold and consigned large quantities of their "Lackawanna coal" to the City of Providence, and its vicinity, for sale and consumption, and dealers in that city keep the same on hand for sale, and advertise and sell it under the aforesaid name of "Lackawanna coal," and in this way and others their coal has become and is favorably known in that market, and the name thereof is of great value, in establishing and maintaining the individuality and identity of their coal, and in causing it to become well and familiarly known to dealers and consumers.

That the defendant is a citizen of, and carries on the business of a coal merchant in Providence; that he does not purchase, keep, or have for sale any of the appellant's "Lackawanna coal," but buys, sells, and deals altogether in other and different kinds, which have been named by the producers thereof, and are generally called and known by the name of "Scranton coal," and "Pittston coal," which are of the same general appearance as the appellant's "Lackawanna coal," and cannot be easily distinguished therefrom by inspection, and in consequence thereof the public may be easily deceived unless the distinctive names given to the respective coals as aforesaid be fairly, truthfully and honestly used and applied in the sale thereof; that the defendant, knowing this, and that his coal does not command so high a price as the appellants' "Lackawanna coal," and intending to injure the appellants, and deceive the public wrongfully and fraudulently, sells and offers to sell his Sranton and Pittston coal by the name of, and as and for "Lackawanna coal," and to effect such fraud and deception, he has a sign upon his coal-yard whereon is painted the name "Lackawanna coal," thereby falsely representing, and intending to have the public to under-

stand that he keeps, and has for sale, the appellant's "Lackawanna coal," and he likewise advertises in the public newspapers that he has "Lackawanna coal" for sale, whereas he has not any of such coal; that he is selling, and offering to sell, his coal as and for the "Lackawanna coal" of the appellants, and is thereby pirating the appellant's trade-mark, and deceiving the public.

That he has been requested to desist from so doing, but while he admits that he does not keep for sale any of the coal produced by the appellants, yet he refuses to desist, and as an excuse therefor he pretends that as his coal comes from a region of country known as the Lackawanna Valley or region, he is entitled to advertise and sell the same by the name of "Lackawanna coal," the contrary whereof is true. That the defendant purchases the coal in which he deals by the name of "Pittston coal" and "Scranton coal." That although the name Lackawanna has come to be used as the name of railroads and places, yet the word was not in common use before it was adopted by the appellants as a trade-mark, and had never been combined with the word "coal," so as to form the compound word "Lackawanna coal," nor has it been since so used by any producer except the appellants, and they claim to have a prior and exclusive right thereto, in which they should be protected. That the defendants' use of the name is fraudulent, &c., and the appellants have never authorized him to use or apply such name to his coal, nor have they acquiesced in his use thereof in that way, and fearing that he will continue to use the name, they ask for an injunction, and that he may account for the profits realized from such unlawful use of the name. (*Fols.* 3–12.)

The answer (*fol.* 19), admits the incorporation of the appellants; that they carry on business in New York; that they own coal lands in Pennsylvania and mine coal therefrom, and that they operate a canal, from the Hudson River to Honesdale, Pennsylvania, and a rail-

road from thence to their coal lands. It also admits that they commenced business in the year 1828, but denies that appellants devised and adopted the name "Lackawanna coal" as a special or distinctive name or trade-mark for their coal, or that their coal commands a higher price than other varieties of coal coming from the Lackawanna region. It denies also that the coal of the appellants is or has been advertised or sold exclusively as "Lackawanna coal" but avers that it has been repeatedly sold under other names. It denies that the name "Lackawanna coal," is or ever has been, either in the vicinity of Providence or elsewhere, the peculiar property and trade-mark of the appellants, or of benefit to them as establishing the identity of the coal. It admits that the defendant has been and is a citizen of Rhode Island, and that he has been and is a dealer in coal, in the City of Providence, and that he keeps anthracite coal for sale, and *that he does not purchase or keep for sale any of the appellants' Lackawanna coal*, and that he deals almost exclusively in coal mentioned in the bill as Scranton and Pittston coal. It denies, however, that those varieties of coal are known by those names exclusively, and avers the contrary, and that they are generally known as Lackawanna coal and are so styled by dealers and the public generally, and are so known in the statistics of the coal trade, and that the appellants themselves have repeatedly dealt in them as Lackawanna coal.

It admits that these two varieties are of the same general appearance as the coal of the appellants, but avers that the coal of the appellants is of no better quality and commands no higher price in the market than the Pittston or Scranton coal. It denies that the defendant is fraudulently or wrongfully selling the Scranton and Pittston coal as Lackawanna coal of the appellants, but *admits* that the defendant is advertising the Scranton and Pittston coal as Lackawanna coal, and that he has a sign upon his yard whereon is inscribed the term "Lackawanna coal;" that such sign has been upon the defendant's premises for the last seven or eight years, and that

during the whole or greater part of that time, the premises adjoining defendant's yards have been occupied by appellants or their agents; that during the whole of this time, and for a considerable time before, he has been selling Scranton and Pittston coal as Lackawanna coal, and has not purchased any of the coal of the appellants, nor offered any of the same for sale, as the appellants well knew. It denies that the defendant is pirating the appellants' trade-mark, and thereby injuring them in the sale of their "Lackawanna coal," and deceiving the public. It avers that the defendant has been actively engaged in the coal trade, in the City of Providence, for the last 27 years, and that since the year 1850 the dealers throughout the country have uniformly sold the Scranton and Pittston coal as "Lackawanna coal," and that this has been done to a very great extent, and with the knowledge of the appellants and their agents, and without any objection on their part; that the appellants have sold the Scranton and Pittston coals, to this defendant, and to others, as Lackawanna coal, and that the appellants made in such sales no deduction from the full market price for Lackawanna coal.

The answer further avers, that the appellants have repeatedly admitted that they had no exclusive right to the term "Lackawanna," and that in January, 1860, they issued a circular in which they cautioned consumers of Lackawanna coal against coal not coming from their company, and directed buyers to "ask for Lackawanna that comes directly from the Delaware and Hudson Canal Company." And that the appellants never made any claim to the exclusive use of the term "Lackawanna" to the knowledge of the defendant, until a short time before the commencement of this action. It denies that the defendant's coal is sold to him under the distinctive name or trade-mark of Pittston coal or Scranton coal, but avers that he purchases the same as coming from the Lackawanna or Wyoming region, and that the same is properly styled Lackawanna coal. It denies that the appellants ever requested the defendant to refrain from using his said signs, and from offering or advertising his

coal as Lackawanna coal, or as and for the coal of the appellants; it also denies that the defendant has intended or practiced any fraud or deceit in advertising, offering for sale or selling any of the said varieties of coal, either towards the appellants or others. It denies that the word "Lackawanna," as the name of the valley, has come into use from the adoption of the name by the appellants for their coal, or that previous to such adoption such valley was known as Lackawannuck.

It avers that said valley and the river running through it had been known as early as the year 1774, by the name "Lackawanna," and as early as the year 1796 by the name "Lackawanna," and that it was then so called in deeds, &c.; and that such name has been in general use for many years before its use by the appellants.

It denies that the compound term "Lackawanna coal" has been used by no other producer of coal, but avers that the "Boston & Lackawanna Coal Co." has operated mines owned by these appellants, and has sold the produce thereof. It denies that the appellants have a prior or exclusive right as respects the word "Lackawanna," as applied to coal, or that they are entitled to any protection in regard thereto, but that even had such prior right existed to the use of the said term as to constitute a trade-mark, yet that all claim to protection in reference to the same has been lost by the appellants by reason of their long and continued abandonment of the same, and their acquiescence in the general use of the term by the coal trade and the public to denote the coal mined in the "Lackawanna valley." The answer then denies each and every allegation in the bill inconsistent with the averments of the answer *(fols.* 19–28).

There was a general replication to this answer *(fols.* 31–32).

Statement of Facts.

The admissions in the pleadings, and the undisputed

testimony establishes the following general statement of facts, viz. : that the appellants were incorporated under the laws of the State of New York prior to 1825, and conducts its principal business in that State, and that the defendant is a resident and citizen of the State of Rhode Island. That in or about the year 1825, the appellants purchased a large quantity of coal lands in the interior of Pennsylvania; and in order to mine and bring the coal therein to market, they constructed at great expense a canal from Rondout, on the Hudson River, to Honesdale, in Pennsylvania, a distance of 108 miles, and a railroad from thence to their coal mines, which they have ever since maintained at a great expense, for the purpose of bringing their coal to market *(fol.* 19).

In 1829 they commenced bringing their coal to market, and have continued so to do ever since, gradually increasing their productions annually. Thus, in the first year they produced 720 tons, in the second year 43,000 tons, and in 1866 (the year before this action was commenced), 1,300,000 tons *(fol.* 37).

It being impossible from mere inspection to distinguish the anthracite coal produced by the appellants from that produced by other parties, or to stamp it with or affix thereto any visible mark or brand, the appellants found it necessary to adopt some specific name for their coal by which it could be distinguished as their production; and so, at the commencement of their business, they adopted for its name, "Lackawanna coal," by which, and by no other, it has been ever since known and called in the market *(fols.* 36, 100).

Although their coal comes from a section of country called by geologists and others the Lackawanna region, still the appellants were the first and the only producers of coal from that region for more than twenty years, during which time their coal had become favorably known in market by the name of Lackawanna coal, indicating thereby ownership and identity.

In or about 1850, the Pennsylvania Coal Co. began to mine coal from their mines situated in the same general region of country (*fol.* 73), and for the first two years the coal which they mined was partially prepared and brought to market by the appellants, and sold under contract in common with their own, but about 1852, when that company began to bring their coal to market and to sell it, they, in order to distinguish it from the appellants' production, adopted and gave it the name of "Pittston coal," by which it has since been known and called (*fols.* 73, 74, 112).

Afterwards, and in and about the year 1856, the Delaware, Lackawanna and Western Railroad Company began to mine coal from their mines situated in other parts of the same section of country, and to distinguish it from that of other producers, they adopted the name of "Scranton Coal," by which it has ever since been known and called by them, and by all *honest* dealers therein (*fols.* 181, 185, 112).

For the same purpose, also, producers of coal from that section of country spoken of as the Lehigh region, adopted and used different and distinctive names for their coal, such as Lehigh Coal, Hazelton Coal, Spring Mountain Coal, Sugar Loaf Coal, &c., and in like manner producers from the Schuylkill region adopted and gave to their coals distinctive names by which the same are known in market (*fols.* 162–167, 130–133).

The Lackawanna, Pittston and Scranton are taken from different veins of coal, although lying in the same general region of country. The Lackawanna is better prepared than either, and is, therefore, considered better and commands a higher price in the market than either the Scranton or Pittson coal (*fols.* 56, 219–221, 111, 112).

The appellants have a market for their coal, not only in the City and State of New York, but also in the cities and towns of the Eastern States, and, amongst others, they have, by diligence and care, obtained a large market therefor at Providence, R. I., where they have for

many years sold annually large quantities by the name above mentioned, and by which it has been long favorably known in that market, and they have derived gains and profits therefrom (*fols.* 38, 39).

The defendant, a coal merchant for many years at Providence, knowing that the appellants' coal was there called and distinguished by the name of "Lackawanna Coal," and of the reputation it had obtained in market, to induce dealers to purchase his coal instead of the appellants', falsely and fraudulently advertises in the newspapers published in that city, and otherwise, that he keeps on hand, for sale cheap, large quantities of "Lackawanna Coal," and in this way, *and by that name*, he has sold from 50 to 150 thousand tons of the Pittston and Scranton coals annually, while he admits, and such is the fact, that he does not have any of the appellants' coal for sale (*fol.* 235).

Upon these facts and statements Judge Blatchford, sitting as Circuit Judge, without considering the appellants' right to the name as their trade-mark, dismissed the bill on the ground, as stated in his opinion, "that "whatever right or title they may have had, as against "the defendant, to the exclusive use of the words 'Lack-"awanna Coal' as a trade-mark, their acts in regard to "his use of those words to designate coal sold by him, "which was not coal mined or put in market by them, "have amounted to a license to him to use those words "to designate Scranton coal and Pittston coal, and thus "to an equitable estoppel against their claim to the re-"lief prayed for by the bill. (7 *Blatchf. R.*, 112, 116.) In this, however, it insisted the Court erred.

POINTS.

First.—The defendant, in his sworn answer, distinctly *admits* (*fols.* 21, 22) that he "does not purchase

or keep for sale" any of the appellants' Lackawanna coal, that "he deals almost exclusively in the Scranton and Pittston coal," and that he is advertising and selling those two varieties "by the name of, *and as and for*, Lackawanna coal, and that he has a sign on his yard whereon is inscribed the name Lackawanna coal." And in his letter to the appellants' agent, upon the subject of such improper use, he says *(fol. 236)*: "I sell Scran- "ton, Pittston, or any other coal coming from the Lack- "awanna regions, as Lack'a coal, and shall continue to "do so until stopped by other authority than yours;" and attaching and referring to his advertisement for sale of 5,000 tons Lackawanna coal, he says: "I do not "intend to sell a pound of your coal under that adver- "tisement, but Scranton mostly."

Waiving for the present the consideration of his pretended license so to use the name Lackawanna coal, no one can doubt for a moment that the defendant thus advertises and sells his coal for the fraudulent purpose of inducing the public, or those who are dealing in the article, to believe that it was, and is in fact, the coal produced and sold by the appellants, and with the intention of supplanting them in the good will of their trade and business. It was originally, and continues to be, a gross fraud upon the public, and, unless the defendant can establish a continuing license, it was and continues to be a fraud also upon the appellants, in depriving them of the benefit of whatever right, title, and interest they had and have in the word Lackawanna, as a *trade-mark* for their coal.

Second.—The appellants have a valid title to the use of that word as a trade-mark, and should be protected in the use thereof against the fraudulent and deceptive acts of the defendant.

I.—It appears from undisputed testimony in the case that the appellants were the first to adopt and impose upon it the new and peculiar office of becoming and being thereafter the name and trade-mark for their coal. They so adopted and appropriated it as early as 1829, at the very commencement of ei r coal business. The first coal which they brought to market was called and sold by the name of Lackawanna Coal, and all the coal which they have hitherto produced and brought to market has been sold and dealt in by that name and by none other. (*Fols.* 100, 36, 78, 89, 110, 116, 117, 134, 135).

II.—By such original special and peculiar appropriation of the word "Lackawanna," the appellants acquired a title thereto and the right to its exclusive use in combination with the word "coal," and thereupon and thereafter, by the continued use thereof, the new compound word "Lackawanna Coal" rightfully became and was and is the name and *trade-mark* for their coal, not limited by territorial bounds. (*Derringer* vs. *Platt*, 29 *Cal. R.*, 292).

(1.) It is not necessary that the word which may be adopted as a name and trade-mark should be a new creation never before known or used, to entitle it to be so adopted. Any word in common use may be taken, if its application be original and so far peculiar as to be capable, when known to the public, of distinguishing the property of the party so adopting it, and to which it may be attached, from that of other parties. In such case the right of the public to use the word is not abridged. It can be used as originally and in any and every other way imaginable, except in its peculiar combination with the word "coal." (*McAndrew* vs. *Bassett*, 10 *Jurist, N. S.*, 550; *Seixo* vs *Provezende Law Rep.*, 1 *Chan.*, 192;

Messerole vs. *Tynberg*, 4 *Abb. Pr. R.*, 410; *Newman* vs. *Alvord*, 49 *Barb.*, 592; *Williams* vs. *Spence*, 25 *How. Pr. R.*, 336; *Amoskeag Manufacturing Co.*, 2 *Sandf. S. C. R.*, 599, *and cases hereafter cited*).

(2.) The exceptions to the right to appropriate a *word* for a trade-mark are, that it cannot be done when the word adopted is merely used as descriptive of *quality*, as in the case of *Stokes* vs. *Landgraff*, 17 *Barb.*, 608; *Corwin* vs. *Daley*, 7 *Bosw.*, 222; *Amoskeag Manuf'g. Co.* vs. *Spear*, 2 *Sandf. S. C. R.*, 559; or where it is the proper name for the article, as in the case of the "Schnapps," *Wolf* vs. *Goulard*, 18 *How. Pr. R.*, 64; or where it has by general use become the appropriate name of an article, which all persons manufacturing the same may use, as in the case of "Dr. Johnson's Yellow Ointment." *Singleton* vs. *Bolton*, 3 *Doug.*, 393; *the "Essence of Anchovies" Burgess* vs. *Burgess*, 17 *Law & Eq. R.*, 257.

(3.) The word Lackawanna, as used by the appellants, does not come within either of these exceptions. It is not the generic name, nor is it naturally the appropriate name for coal. In its original sense it did not mean *coal*, nor had it become by previous use *the name of coal*, nor does it imply, nor was it intended to indicate the *quality* of coal, but it was adopted for and became, and was, and still is, the specific name thereof, indicating its origin and ownership, and by which it could be bought and sold in market, and the Court below was correct, therefore, in holding, as it in effect appears to have done, that the appellants had established their title to the word as their trade-mark.

III. The defendant does not pretend, nor does the Court so hold, that he originated the name, or that any other company or person adopted or used it as a specific name for coal prior to the time when the appellants adopted it. He was forty-six years of age when he testified, in 1869 (*fol.* 151), so that he was a mere child when it was adopted. The Pittston coal received its name in 1852 (*fols.* 73, 74, 112), and the Scranton, in 1856 (*fols.* 181, 185, 112), neither of which was named for more than twenty years after the appellants adopted the name for their coal.

IV. Nor has the defendant any color of right to sell his coal by the name of Lackawanna coal, from the mere fact that it comes from what is commonly known as the Lackawanna region; more especially since it does not come from the appellants' mines, nor through them as producers, and is not, in fact, the coal known in market as Lackawanna coal. (*McAndrews* vs. *Bassett*, 10 *Jurist., N. S.*, 550; *Seixo* vs. *Provezende*, *Law Rep.*, 1 *Chan.*, 192; *Newman* vs. *Alvord*, 49 *Barb.*, 588.)

In McAndrews *vs.* Bassett, *supra*, it appeared that the plaintiff had first adopted and used the word "Anatolia" as a name for his liquorice, and the defendant insisted upon his right to use that word also as the name of his liquorice, because it was the name of a country, the use of which, as he alleged, was common to all, and therefore the plaintiff had no exclusive right to its use; but the Court pronounced the argument a "fallacy," and stated that although property in a word cannot exist for *all* purposes, yet it will exist when applied by way of stamp upon a stick of liquorice, the moment the article thus stamped goes into market. In the case at bar, although the coal cannot be stamped, yet the moment it is produced in market the name

Lackawanna becomes united to it as fully as if it had been stamped thereon. There is no difference in principle between the two cases.

In Seixo *v.* Provezende, *supra*, it appeared that the plaintiff, Baron de Seixo, was the proprietor of an estate, called the Quinta de Seixo, which was celebrated for the port wine produced from it, and which he consigned to London for sale, placing upon the heads of the casks various marks, and at the bung a crown with the word, "Seixo," and so his wine became known as "Crown Seixo." The defendant being the lessee of an adjoining estate known, also, as the Quinta de Seixo, sent his wine to London with certain marks on the head of the casks, and at the bung thereof a crown and the words, "Seixo de Cima" (upper Seixo), and he claimed the right so to use the name Seixo, on the ground that he was owner or lessee of a vineyard adjoining the plaintiff's, also of several small vineyards on the opposite side of the river, parts of which were known by the name of "Seixo," meaning *stoney* or *pebbly*. The Court held, that even conceding that, it did not justify the defendant in adopting a device or brand, the probable effect of which was to lead the public to suppose when purchasing his wine, that they were purchasing the wine produced from the plaintiff's vineyard (*pp.* 197-8).

In the case of Newman *vs.* Alvord, *supra*, the plaintiffs manufactured water-lime from beds near Akron, Erie County, New York, which they called "Akron Cement, Akron Water Lime," and the defendant manufactured a similar article from his beds near Syracuse, Onondaga County, and called his "Onondaga Akron Cement and Water Lime," and it was held that the word Akron, as used by the plaintiffs, was their trade-mark, and

that they were entitled to be protected in its use by injunction.

Third.—The defendant has not established by competent testimony that any company or person, other than himself, advertises or sells their own or other kinds of coal by the name of Lackawanna coal.

I In his answer, and in his testimony, he describes and speaks of the two kinds of coal in which he deals, as the Scranton and Pittston coal, and if he pretends to say that these two classes or varities are designated in trade or bought and sold in market as Lackawanna coal, he states what is not true, for the weight of evidence clearly establishes the contrary. Even his own testimony is to the contrary effect. He says (*fol.* 152) he buys and sells coal coming from the Lackawanna region under the name of Lackawanna coal, which is true, so far as respects his *sales*, but it is not true that he *buys* by that name. He continually, throughout his testimony, speaks of the Scranton and Pittston coal by those distinctive names, and never by the simple name of Lackawanna coal. That these varities may be grouped together in newspaper articles, periodicals, journals and statistics, under the general name of Lackawanna coal, proves nothing. So the different varities of Lehigh and of Schuylkill are grouped under those two general terms; so the different wines of Germany are grouped, and called Rhine wines, but no one could properly say that that gave any right to use the peculiar and specific name of one kind of coal or wine, as and for the name of another and different kind produced or manufactured by another party.

II. The question is by what distinctive name are these varieties of coal bought and sold and known in market. The appellants insist, that according to the clear weight of evidence, each has been bought and sold by its own peculiar name, given to it by the producer thereof, and when either has been sold by another name, especially by the name of Lackawanna coal, it has been fraudulently done and with the intent to deceive the public. The Circuit Court erred in holding that "other dealers in coal in Providence have for many years past been selling Scranton coal as Lackawanna coal." Even if this was so, it does not legalize the defendant's conduct, but the evidence does not warrant the conclusion.

Walter Lawton, the defendant's witness says (*fol.* 148), he was formerly the agent at Boston and Providence, for about 12 years; that he had a sign painted "Old Company's Lackawanna Coal," to designate the coal which he sold from what the defendant was selling. But observe that the defendant during that period, bought and sold the appellant's coal as well as the Scranton coal (*compare fols.* 148–9, *with fols.* 159–60). Moreover, this witness does not prove that "other dealers" had been or were selling Scranton coal as Lackawanna coal, although the defendant may have been doing so.

William Mershon, who lives in New York, testified (*fol.* 164) about the names of the varieties of coal, but he don't pretend that any person buys or sells Scranton by the name of Lackawanna coal. He knows that coal coming from the Lackawanna region, is placed in the *statistics* under the name of Lackawanna coal (*fol.* 167, *Ques.* 30, 32).

Thomas N. Pearce, of Cranston, R. I., coal dealer says (*fols.* 330, 331), the Scranton coal is sold to him as Scranton coal. At (*fol.* 332), he says he has

sold the Scranton "by the simple name of Lackawanna coal from the Lackawanna coal regions." But he don't pretend to say how often when or where he so sold it, nor how much he so sold. He may have done so but once, and that since the commencement of the suit.

Stephen S. Salisbury, a coal dealer, in answer to the 3d interrogatory (*fol.* 314), says (*fol.* 333), these three varieties of coal "are known under the names of Pittston, Lackawanna and Scranton, and have been known and sold under said names for the last ten or twelve years." He says (*fol.* 334), he "*purchases* under the name of Scranton coal and *sells* it for Lackawanna, Scranton or Gray Ash, or White Ash." That is, he deceives the public by selling his Scranton coal as and for any coal which a purchaser may ask for or desire to purchase. Now, what reliance can be placed upon the testimony of one who openly avows that he deceives the public?

Wi liam D. Pierce is a coal dealer in Providence and understands that these varieties are *called* by the distinctive names of Lackawanna, Pittston, and Scranton, and he never knew them to be sold under any other names, and he sells the Scranton coal as Scranton coal coming from the Lackawanna regions —sells it as white ash. Has *sometimes* sold it as Lackawanna coal, but he don't say how often. If he ever sells it as Lackawanna coal it is, no doubt, in cases where the purchaser particularly desired that kind of coal, and in these cases he deceived the purchaser.

The defendant don't pretend to say that any particular dealers sell Scranton by the name of Lackawanna coal, except himself. He was asked on his direct examination (*fol.* 152, *ques.* 8), under what name the coal mined by the companies men-

tioned in his last answer was generally designated and sold by dealers, and he said: "They designate it in the trade, and by the statistics, and sell it as Lackawanna coal." This is all he says in regard to what others do.

Moses Taylor endeavored to have it understood that the Scranton coal was known in market as Lackawanna coal, and the Court gave undue weight to his testimony, where, in answer to the last question *(fol.* 172, *ques.* 20*)*, he says: "We have sold it to Mr. Clark, thousands and thousands of tons, and have bought it myself by that name, and used it;" for he did not mean to be so understood, and his testimony, taken as a whole, shows the contrary. His desire to shield a customer induced him to say more than the truth warranted. He was not, and never had been, an agent or employee for selling Scranton coal. He is a merchant and banker (President of the City National Bank), and, as director of the coal company, he did no more than William E. Dodge, his co-director therein, and who don't pretend that he or Mr. Taylor sold coal, nor that their company sold it, as or by the name of Lackawanna coal. (*Compare testimony of Taylor and Dodge, fols.* 163, 179.) Moreover, Taylor himself testifies, that for years past their coal has been chiefly sold at public auction; and when asked if it was not invariably advertised and sold as Scranton coal, he says *(fol.* 171, *ques.* 11*)*, it was advertised and sold as "Scranton coal from Lackawanna Valley." *(See also fol.* 172, *ques.* 17.*)* Now, on referring to the advertisements, it appears that it was originally described as Scranton coal, and so continued to be until 1866, when it was advertised as "Scranton coal, coming from Lackawanna Valley." (*Compare the advertisement of* 1863, *fol.* 138, *with those of* 1866, *fols.* 229, 238–240.)

It appears from this that there was a growing

desire to pirate the name of the appellants' coal but they did not fully do so, and although Mr. Dodge fell into a grave error for a man like him, in testifying in effect (*folio* 187, *question* 42) that he considered it "a perfectly honest transaction" for his company to assume for its coal the name Lackawanna, knowing that it was the peculiar name of the appellants' coal previously adopted, yet he did not say, and could not have truthfully said, that his company had ever advertised or sold its coal by the simple name of Lackawanna coal. All he could say was they had sold it as "Scranton coal from the Lackawanna Valley."

III. Even if it be established by the testimony, which is not conceded except for the argument, that others have sold Scranton coal by the name of Lackawanna coal, yet that did not, and does not, justify the defendant in so doing. It is no defence to this action that the defendant's fraud and deception has been multiplied, and hitherto Courts have not shown any disposition to treat that as a defence, but rather as an aggravation. (*Taylor* v. *Carpenter*, 2 *W. & M.*, 8; *Cocks* vs. *Chandler*, *Law Rep.*, *Eq. Series*, 1871, *p.* 445; *Gillott* vs. *Esterbrook*, 47 *Barb*, 470; *Filly* vs. *Fasett*, 8 *Am. Law. Reg.*, 402, 405.)

In Cocks *vs.* Chandler, *supra*, which related to the defendants' use of the word "original" as applied to "Reading Sauce" the Court say: "In this case "it is shown that a person named Miller commit-"ted a gross piracy in this matter, and that it was "not complained of. But that does not justify "another person in doing the same thing or any-"thing like it."

Fourth.—The Circuit Court erred in holding that the defendant, in what he had done, had not been acting otherwise than "honestly and fairly," and that he had "not sold as the plaintiffs' coal, what was not their coal."

I. In view of the admitted facts, this conclusion is astonishing, and as erroneous as it is astonishing.

(1.) The bill alleges *(art. 7, fol. 8)*, that the defendant has been and is "wrongfully and fraudulently selling and offering for sale his aforesaid Scranton and Pittston coal *by the name of, and as and for Lackawanna coal*," which is admitted in the answer *(fol. 22)*, where the defendant denies the allegations of the bill, in article seven, "*excepting only* "that he *is* advertising and selling the two varie- "ties of coal therein mentioned as Scranton and "Pittston coal, *by the name of, and as and for* "Lackawanna coal, and that he has a sign upon "his yard whereon is inscribed the name Lacka- "wanna coal, *which averments he admits to be* "*true*." In his letter *(fol. 236)*, he says: "I sell Scranton, Pittston, or any other coal coming from the Lackawanna regions, *as* Lackawanna coal."

(2.) He thus clearly admits, contrary to the Judge's findings, that he "had sold as the appellants' coal what was not." How can his conduct be reconciled with honesty and fair dealing, when he admits that he sells *his* coal *as and for* Lackawanna coal. In Croft *v.* Day (7 *Beav. R.*, 84), Lord Langdale says: "No man has a right to "sell his own goods as the goods of another. "You may express the same principle in differ- "ent form, and say that no man has a right to "dress himself in colors, or adopt and bear sym- "bols to which he has no peculiar or exclusive

" right, and thereby personate another person " for the purpose of inducing the public to sup- " pose either that he is that other person, or that " he is connected with, or selling the manu- " facture of such other person while he is really " selling his own, It is perfectly manifest that " to do these things is to commit a fraud and " a very gross fraud."

(3.) But to establish the defendant's fraud and deceit, it is not even necessary to show that he sells his coal *as and for* that of the appellants. It is sufficient that he intentionally sells it by the *name* which he knows the appellants had previously adopted as the name of their coal. (*Walton* v. *Crowley*, 3 *Blatch.*, 440.)

Fifth.—The Circuit Court erred also in holding that all the defendant had done, had been done " under " such acts of acquiesence on the part of the plaintiffs, " as are equivalent to a license to him by them to do " what he has done," and that, therefore, to grant the prayer of the bill would be " a violation of every true " principle of equity."

I. There is no sufficient evidence that the appellants knew that the defendant was, or that any other persons were, fraudulently using the name of their coal in selling other varieties of coal.

(1.) For sixteen years and upwards, and down to within six or seven years before the commencement of this suit, the defendant had bought and sold the appellants' coal, and had a right to advertise and sell it by its proper name, and there is no evidence that during the time he so bought and sold their coal he sold any other by the same

name. He may have done so, but if he did, it was not known to the appellants. Nor is there any evidence from which it can be determined that they knew that he was wrongfully using their trade-mark until about the date of the correspondence on the subject, in the summer of 1866 (*fol.* 231).

(2.) The mere fact that their agent knew that others were selling their coal by the name of Lackawanna coal was not sufficient to charge them with notice of the fact before at least it was brought home to their knowledge—certainly not before the Vice-President directed them to put upon the sign old Lackawanna coal, which was before the defendant stopped purchasing their coal. At that time the strife was probably between the appellants' agent and the defendant, both having the appellants' coal for sale.

(3.) The evidence upon this subject is substantially as follows: Mr. Hartt, the sales agent of the appellants, testified that some time previous to this controversy a person had violated the trade-mark, who, upon being requested to desist, promised to do so, and did (*fol.* 74). Mr. Seymour, Treasurer, thinks complaints had been made that persons were improperly using that name (*fols.* 141, 142); that some two or three years before this suit was commenced he had heard that the defendant was violating the plaintiff's trade-mark (*fol.* 141). The defendant says (*fols.* 159, 160) that he had talked to Manchester & Hopkins about it, and believed that it was known to the appellants, and that no complaints had ever been made to him. Manchester & Hopkins were not the agents of the appellants (*fols.* 118–120).

II. But, even conceding for the argument that the

appellants did know that the defendants and others were pirating their trade-mark, and did not prosecute them therefor, still that knowledge and acquiescence did not amount to a license to him to continue to do so, especially after they objected to such use (*Taylor* vs. *Carpenter*, 2 *Wood & M.*, 8; *Filly* vs. *Fassett*, 8 *Am. Law Reg.*, 402, 405; *Cock* vs. *Chandler*, *Law Rep., Eq. Series*, 1871, *p.* 445; *Lee* vs. *Haley*, 5 *Chan. Appeal cases*, 155.)

III. If it did amount to a license, still it was only temporary, and operated so far only as to relieve the defendant from any damages by reason of such use. It was revocable at will, and it was in fact revoked before this action was commenced, by the appellants' request, that the defendant should desist from the further use of their trade-mark. (Exs. A, B, C, D, *fols.* 238, 237.)

Sixth.—The attempt on the part of the defendant to show that the appellants had sold other coal than their own by the name of Lackawanna coal utterly failed.

I. It appears (fols. 73, 74, 126 to 128, 132, 214, 218 to 221) that during the years 1850 and 1851, the appellants, by contract with the Pennsylvania Coal Company, received their production of coal for those two years, screened it, brought it through their canal to market, and sold it in common with their own by the name of their coal. There was no fraud in this as against the Pennsylvania Coal Company, for it was done at their request by agreement; and it did not deceive the public, for during those years that coal had not received, and did not have any name, by which it was known or called. In

1852, that Company commenced bringing its own coal to market and selling it, and then for the first it received the name of Pittston Coal, since which the appellants have not sold any of it.

II. It also appears (fols. 74 to 76, 210, 211, 218 to 221) that certain mines are worked for the appellants, that they take the coal so mined at the mines, transport it to Honesdale, prepare it for market by passing it over their screens, bring it to market, and so, being of the same kind and quality as that mined by them, they sell it in common with their own by the name of Lackwanna Coal. They are, in fact, the producers of such coal, and as it has no other distinctive name, they may lawfully regard it as their own production, and sell it by their name. In most of these cases, also, the mines are owned by the appellants.

III. And although it appears that at times when the appellants were out of their own coal, in order to accommodate their customers they purchased Scranton coal, yet the sales agents testify distinctly that it was never sold as Lackawanna coal, but always as Scranton coal (fols. 82, 83).

Seventh.—The Court below gave too great effect to the testimony relied upon to show a license. At the utmost the testimony only showed such *laches* as would preclude the appellants from claiming damages during the period they neglected to assert their rights. But by dismissing the bill absolutely the Court has sanctioned what must be conceded to be a wrong upon the appellants and upon the public. The bill should at least have been sustained to the extent of awarding to the appellants an injunction against the continuance of

the wrong which the Circuit Court assumed the defendant had committed.

Eighth.—That this Court has jurisdiction to restrain the defendants from the further use of the appellants' trade-mark is beyond question. The following are some of the numerous cases in the Federal and State Courts, and also in the English Courts, where injunctions have been granted to restrain the use of *names* which had been adopted as trade-marks:

In Howard *vs.* Henriques (3 *Sandf. S. C.*, 725) the plaintiff had opened a hotel in the City of New York, which he called "Irving House" and "Irving Hotel," and the defendant having opened another hotel, called it also "Irving Hotel," and he was enjoined, the Court remarking that "a party will be protected in the use of a *name* which he has appropriated, and by his skill rendered valuable."

In Stone *vs.* Carlan (13 *Law Rep.*, 360), the defendant was restrained from using the name "Irving Hotel" or "Irving House" upon his coaches which ran to and from the steamboat wharf for the purpose of transporting passengers, he not being connected with that hotel.

In Marsh *vs.* Billings (7 *Cush. R.*, 322), the defendant had coaches which ran to and from depots, carrying passengers, and his drivers wore a badge with the name "Revere House" thereon; the action, which was for damages, was sustained.

In Woodward *vs.* Lazar (21 *Cal. R.*, 448), the plaintiff had been the proprietor of a hotel which he named "What Cheer House," but which he had ceased to occupy, having moved into an adjoining house, to which he gave

the same name. The defendant afterwards became the occupant of the former house, and having called it the "Original What Cheer House," he was restrained from using the words "What Cheer House."

In Genin *vs.* Chadsey (*Hoffman's Provisional Remedies*, 245), the plaintiff had, for a long time, used as a sign over the door of his saloon in Broadway, the words "Live and Let Live," and the defendant, having opened a saloon in the adjoining house, put over the door of his house the same words, and he was restrained,

In Spaulding *vs.* Spaulding (*Superior Court, believed not to be reported*), the plaintiff made and sold an article which he called "Spaulding's Prepared Glue." The defendant afterwards made an article which he called the same, and although permitted to use his own name, he was restrained from using in connection therewith the words "Prepared Glue," as a name for his article.

In the Brooklyn White Lead Co. *vs.* Masury (25 *Barb.*, 416), the plaintiffs marked their casks of white lead "Brooklyn White Lead Company," after which the defendant manufactured a like article, and marked his casks "Brooklyn White Lead and Zinc Company," and he was restrained from so using the word "Company," or "Co."

In Christy *vs.* Murphy, (12 *How. Pr.*, 77), the plaintiff used the name "Christy's Ministrels," and the defendant, who had opened a similar place of amusement, was restrained from using those words on his sign.

In Fetridge *vs.* Merchant (4 *Abb. Pr. R.*, 156), the defendant was restrained from using as the name of his article the words, "Balm of a Thousand Flowers," which the plaintiff had previously adopted as the name for an article which he made.

In Williams *vs.* Johnson, (2 *Bosw. R.*, 1), the plaintiff had adopted the name "Genuine Yankee Soap," and it was held that he had a right to appropriate those words as his trade-mark. (*Hoffman's Pro. Rem.*, 243.)

In Burnett *vs.* Phalon, (9 *Bosw. R.*, 192), the plaintiff had adopted as the name of his hair oil "Cocoaine," and the defendant afterwards adopted as the name for his "Cocoine," and he was restrained.

In Howe *vs.* Howe Machine Co. (50 *Barb.*, 236), the plaintiff used the word "Howe" as a trade-mark, placed by him on the sewing machines, which he sold under license from E. Howe, Jr., the patentee, and it was held that he had the exclusive right to the word, and the defendants were restrained from from using it.

In Newman *vs.* Alvord (49 *Barb.*, 588), the plaintiff made lime at the town of Akron, and he called it "Akron Lime," and the defendant called his lime, which was made elsewhere, by the same name, and he was restrained.

In Gillott *vs.* Esterbrook (47 *Barb.*, 455, *S. C., affirmed in the Court of Appeals*), it was held that the number "303" was a proper subject of a trade-mark of pens manufactured by the plaintiff, and the use of those numbers by the defendant on his pens were restrained. (*See also* 3 *Duer*, 624).

In Filley *vs.* Fassett (8 *Am. Law. Reg.*, 402), the plaintiff had adopted as a name and trade-mark for his stoves the words "Charter Oak," and the defendant afterwards adopted the same for his, and the Supreme Court of Missouri restrained him.

In Barrows *vs.* Knight (6 *Rhode Island Rep.*, 434), the plaintiff had adopted as the name for certain cotton cloth the words "Roger Williams Long Cloth," and the

defendant afterwards used for his cloth the name "Roger Williams," and he was restrained. The Court say: "We are not aware of any legal restrictions upon a manufacturers' choice of a *name* for his trade-mark, any more than his choice of a symbol, so that the name be so far peculiar as applied to the manufactured goods as to be capable of distinguishing when known in market one manufacturer's goods of a certain description from those of another."

In Knott *vs.* Morgan (2 *Keene R.*, 220), the term "London Conveyance Co." was adopted as the name of an Omnibus Company, and it was upheld as a trade-mark, and the defendant enjoined from using it.

In Remsen *vs.* Bental (3 *Law Journal, N. S.*, 161), the letters "H. H. C." were used as a trade-mark on plows, and it was upheld.

In McAndrew *vs.* Bassett (10 *Jurist N. S.*, 550), the word "Anatolia," as a brand for licorice, was sustained against the argument that the word was the name of a country, common to all, and therefore that there could be no property in it. (*See also Seixo* vs. *Provezende*, *Law Rep.*, 1 *Chan.*, 192, *above cited.*

In Sykes *vs.* Sykes (3 *Barn. & Cress.*, 541), the words "Sykes' Patent," as a trade-mark for shot-bolts, was sustained by injunction against the defendant, who was of the same name.

In Clement *vs.* Maddick (22 *Law Rep.*, 428), the defendant was restrained from using "Penny Bell's Life," as the name of his newspaper, on the ground that it was an infringement of the name of the plaintiffs' paper, called "Bell's Life."

In Gout *vs.* Aleplogu (6 *Beavan*, 69), the defendant was restrained from using on his watches the word

"Passendede," meaning warranted, or approved, which he plaintiff had adopted and used on his.

In Croft *vs.* Day (7 *Beav. R.*, 89), "Day & Martin," a trade-mark for blacking, was sustained against the defendants, whose name was Day & Martin.

In Messerole *vs.* Tynberg (4 *Abb. Pr., N. S.*, 414), the word "Bismarck," as a name for paper collars, was upheld as a trade-mark.

In Hine *vs.* Last (10 *Lond. Jur.*, 101), the word "Ethiopian," as a portion of a trade mark, was upheld, and the defendant restrained from using the same.

In Taylor *vs.* Carpenter (3 *Story*, 458; 2 *Wood. & M.*, 2; 11 *Paige*, 292, *and* 2 *Sand. Ch. R.*, 596), the defendants were enjoined from using the words "Taylor's Persian Thread."

In Congress and Empire Spring Co. *vs.* High Rock Congress Spring Co. (decided by the N. Y. Court of Appeals, April, 1871, but not yet reported), it was held that the word "Congress" used by the plaintiffs in connection with the sale of Congress Water" is a proper and legitimate business trade-mark, and that the use of it by the defendant as a part of their corporate name, and as descriptive of the water prepared and sold by them, was a fraudulent invasion of the rights of the plaintiffs, entitling them to protection by injunction.

Ninth.—The decree below should be reversed, and a decree entered, that an injunction issue pursuant to the prayer of the bill, and a reference ordered, accord-

ing to analogy in Patent causes, to ascertain the damages the appellants have sustained, by reason of such wrongful use of the trade-mark.

Coffeur vs. *Brunton*, 4 *McLean*, 518.

E. H. Owen,
S. P. Nash,
Counsel for Appellants.

Supreme Court,

OF THE UNITED STATES.

DECEMBER TERM, 1870.

O. D. No.

THE PRESIDENT, MANAGERS AND COMPANY OF THE DELAWARE AND HUDSON CANAL COMPANY,

Appellants,

vs.

HENRY C. CLARK,

Respondent.

Brief for Respondent.

FULLERTON, KNOX & RUDD,

Attorneys for Respondent.

New York:

BENJ. H. TYRREL, Book, Law and Job Printer, 74 Maiden Lane.

1871.

Sawder's Mill 1892
10 Inch Std $1,550

First Case -

Supreme Court,

OF THE UNITED STATES.

THE PRESIDENT, MANAGERS AND COMPANY OF THE DELAWARE AND HUDSON CANAL COMPANY,
Appellants,

vs.

HENRY C. CLARK,
Respondent.

BRIEF FOR THE RESPONDENT.

This is an appeal from a decree of the U. S. 1
Circuit Court, in the Second Circuit, dismissing the appellants' bill of complaint with costs.

The final hearing was had on the pleadings and proofs before Judge Blatchford.

The suit was brought by the complainants to enjoin and restrain the defendant, who is a dealer in coal in the City of Providence, Rhode Island, from advertising, or selling, or attempting to sell any coal other than that mined and produced by 2

the conplainants, under or by the name of "Lack-
3 awanna coal," and also for an accounting for any profits that may have been heretofore realized by him from so doing.

The complainants are a corporation, created by the laws of the State of New York, owning and operating a canal from Rondout, on the Hudson, to Honesdale, Pennsylvania, and a railroad from Honesdale to their coal mines in the Lackawanna Valley in the latter State.

The claim of the complaint is, substantially, that the complainants have a trade-mark in the
4 word "Lackawanna," as applied to coal, which has been violated by the defendant knowingly, wilfully and fraudulently, in selling the coal mined and produced by the Delaware, Lackawanna and Western Railroad Company and by the Pennsylvania Coal Company, as and for "Lackawanna coal," it being contended by the complainants that the only coal to which that name can properly be applied is that mined and produced by themselves.

The defence is rested upon the general proposition that the complainants have not now, nor
5 ever have had, any such original or exclusive title in the name "Lackawanna," as to give them an exclusive right to apply it to their coal. This is claimed by the defendant on two grounds: First,

that the name "Lackawanna" being now and having been for a period of nearly a century [and for 6
a period long anterior to the formation of complainants' company] the name of a geographical district or region, no persons under the principles of law applicable to trade-marks, could ever claim an exclusive property in it, especially not as against others having an equal natural right to it from their location. Second, that independent of this, the whole course and dealings of the complainants in regard to said name has been such, during the last twenty years. as to utterly estop them now from setting up any such claim as that brought forward in this suit. 7

The substance of the pleadings is well abstracted by Judge Blatchford in his opinion, reported in 7 Blatch., C. C. Rep pp. 113–116, as follows:

The complainants "assert in their bill, which was filed January 2d, 1867, that they have a title to the name of "Lackawanna coal," as a special, particular and distinctive name or trade-mark for their coal, the product of their mines, in distinction from the coal of other parties; that, for a num- 8
ber of years past, they have sold and consigned, and still continue to sell and consign, large quantities of the said "Lackawanna coal," for sale and consumption in Providence aforesaid, and in its vicinity; that certain dealers in Providence keep on hand for sale, and advertise and sell, the plain-

tiffs' coal under the aforesaid name of "Lacka-
9 wanna Coal;" that the defendant has carried on, and still carries on, at Providence, the business of a coal merchant, or dealer in coal, and for that purpose owns and occupies a yard in which he keeps anthracite coal for sale; that he does not purchase, keep or have for sale any of the plaintiffs' "Lackawanna coal," but exclusively buys, sells and deals in other and different kinds of anthracite coal, which have been named by the producers thereof, and are generally called and known by the names of, "Scranton coal," and "Pittston coal," and are produced by other and
10 different companies; that the coal in which the defendant deals is of the same general appearance as the plaintiffs' "Lackawanna coal;" that the defendant has been wrongfully and fraudulently selling and offering for sale his aforesaid "Scranton" and "Pittston" coal by the name of, and as, and for, "Lackawanna coal," and, to carry out and effect such fraud and deception, has erected, or caused to be erected, and has, a sign upon or at his coal yard, whereon is painted or inscribed the name "Lacka-
11 wanna coal," thereby falsely and fraudulently representing, and designing and intending to have the public to understand and believe, that he keeps and has for sale the plaintiffs' "Lackawanna coal;" that, in order further to carry out his aforesaid false and fraudulent designs and intentions, and to injure the plaintiffs in the sale of their aforesaid

coal, he has falsely advertised, and continues to advertise, in the public newspapers printed in the city of Providence, that he has for sale "Lackawanna coal," whereas, in truth and in fact, he has 12
not any of such coal; that he has been, and is selling and offering to sell his said coal as and for the "Lackawanna coal," of the plaintiffs; that he is, in these ways, pirating, and wrongfully and fraudulently using, the plaintiff's aforesaid name or trade-mark, and thereby injuring them in the sale of their "Lackawana coal," and deceiving the public; that, as an excuse for such wrongful and fraudulent acts, he gives out and pretends, that his coal comes from a region of country in the State of Pennsylvania, known as the Lackawanna region or Valley, and that, therefore, he is intitled 13
to advertise and sell his coal by the name of "Lackawanna coal;" that his coal is sold and delivered to him by the original producers thereof, under their distinctive trade-marks or names of "Pittston coal" and "Scranton coal," so given to it by the producers thereof, and that the greater portion thereof, if not all, is taken from the valley or region more properly known as the Wyoming Valley; that, when the word "Lackawanna" was adopted by the plaintiffs 14
as their trade-mark as aforesaid, it had never been used or combined with the word "coal," so as to form the compound word or term "Lackawanna Coal," and that it has not at any time since, been so used by any producer of coal except the plaintiffs; that, so far as respects the use of the word,

as applied to coal, the plaintiffs have a prior and
15 exclusive right thereto, in which they should be protected ; that the use of the plaintiffs' aforesaid trade-mark, or name, by the defendant, is fraudulent, and is used with the design to obtain for his coal the reputation and credit due to, and possessed by, the plaintiff's coal, and to injure the plaintiffs in the premises ; and that the plaintiffs have never, in any manner, authorized the defendant to use or apply such name to his coal, nor, in any wise, acquisced in his use thereof. The prayer of the bill is, that the defendant, and his agents, may be enjoined and restrained from keeping or using
16 a sign over, or upon, or about his coal-yard, or place of business, with the words "Lackawanna coal" or "Lackawanna," painted or inscribed thereon, and from advertising "Lackawanna coal" for sale, and from selling, or offering or attempting to sell, his aforesaid coal or any coal which does not come from the plaintiffs' mines, under or by the name of "Lackawanna coal," and that he may account for or pay to the plaintiffs whatever profits he may have realized from the
17 use of the plaintiffs' name or trade-mark, and from the sale of his coal under or by the name of "Lackawanna coal."

The answer, which was filed on the 11th of April, 1867, denies that the name of "Lackawanna coal" ever has been, or now is, either in the city of Providence and vicinity, or elsewhere, the peculiar property and trade-mark of the plain-

tiffs. It admits that the defendant has been, and still is, engaged in business as a dealer in coal in Providence, and occupies a yard in which he keeps anthracite coal for sale, and does not purchase or keep for sale any of the plaintiffs' "Lackawanna coal," and deals almost exclusively in the varieties of coal mentioned in the bill by the names of Scranton coal and Pittston coal. It denies that the said varieties of coal are exclusively known by those names, and avers that they are generally known by the name of "Lackawanna coal," and are so regarded and so styled by dealers in coal and the public generally. It admits that the defendant is advertising and selling the two varieties of coal mentioned in the bill as Scranton coal and Pittston coal, by the name of, and as, and for "Lackawanna coal;" and that he has a sign upon his yard, whereon is inscribed the name "Lackawanna coal." It avers that said sign, "Lackawanna coal," has been upon his said premises during the last seven or eight years; that, during the greater part of said period, the premises adjoining the said coal-yard of the defendant have been used and occupied by the plaintiffs, or by persons in their employment and interest, for the purpose of selling their coal; that during said period he has advertised and sold large quantities of the said two varieties of coal mentioned in the bill as Pittston coal and Scranton coal, under and by the name of "Lackawanna coal;" that, during the whole of the above period, and for a considerable number of years previous thereto, he had not pur-

chased any of the coal of the plaintiffs, or offered
21 any of the same for sale, as the plaintiffs well knew ; that the plaintiffs, in January 1860, issued a circular, in which they cautioned consumers of "Lackawanna Coal" against coals not coming from their Company, and directed buyers to "ask for Lackawanna that comes directly from the Delaware and Hudson Canal Company;" and that the plaintiffs never made any claim or pretence that they were entitled to the exclusive use of the name "Lackawanna coal," to the knowledge of the defendant, until a short time prior to the commencement of this action. It denies that the de-
22 fendant has intended or practiced any falsehood. fraud, or deceit, in advertising, offering for sale, or selling, any of the above mentioned varieties of coal, either towards the plaintiffs, or any other person. It also denies that the plaintiffs have a prior or exclusive right as respects the use of the word "Lackawanna," as applied to coal, and that they are entitled to any protection in respect thereto, and avers that, even if such prior right to said use of said word or term had existed, as to constitute a trade-mark, such right, and all claim to protection in reference to the same, have been wholly lost to the plaintiffs by their long
23 continued abandonment of the same, and their acquiescence in the common and general use of said word or term by the coal trade and the public, as relating to and being properly the designation of, all coals mined and produced in the Lackawanna valley."

The following facts are either entirely undisputed or else are supported by such an overwhelming preponderance of testimony as to be practically so: 24

I. The word Lackawanna is not the device or invention of the complainant, but, on the contrary, it has been in general use as the name of a valley and river in the State of Pennsylvania for nearly one hundred years, and long before the 25 time of its first adoption by the complainants.

The allegations of the Bill of Complaint on this subject are to the effect that the complainants "sought out, devised, and adopted the name "Lackawanna coal as a special, particular, and "distinctive name or trade-mark for their coal, "by which it could be known as the product of "their mines in distinction from the coal of other 26 "parties, and by which they could introduce the "same to the favorable notice of dealers and "consumers." * * *

"That the word Lackawanna has come into "use as the name of a valley from the adoption "and use thereof by your orators as the name of "their coal, previous to which the valley had "been, and was known and called, Lackawan-"nock;" and further, that the word Lackawan-"na has come into use as the name of a region or 27 "valley and as part of the name of certain rail-"roads *of late years.*"

These averments are specifically controverted in the answer, which states as follows: "He "[*i. e.*, the defendant] denies that the word Lack-"awanna has come into use as the name "of a valley from its adoption or use by the "complainants as the name of their coal, or "or that previous to such adoption the name of "said valley had been known as and called

28 "Lackawannock. He avers that said valley and "river running through it had been known, as "early as the year 1774, by the name of Lacka- "warna, and as early as the year 1796 by the "name Lackawanna, and were so mentioned and "described in deeds and other ancient documents; "and he avers that the said name Lackawanna "had been in general use as the name of such "valley for many years at the time of its first use "by the complainants." This issue is evidently
29 one of importance at the outset. Was this name, Lackawanna, claimed in this suit as a "trade-mark" when applied to coal, actually *invented* and *devised* by these complainants, and employed by them in a *special* and *particular* manner, as the *distinctive* name of their production, or was it, on the other hand, the well-recognized name of a well-known and defined geographical district, half a century before the complainants ever thought of employing it or of claiming in it
30 any special property?

The complainants offered no testimony whatever to support the averments of their bill of complaint on this subject. That, paper verified by Mr. Isaac N. Seymour, their treasurer, made the allegation quoted above. When Mr. Seymour was on the stand he was asked (Question 62, fol. 129): "Have you any knowledge as to the origin of the word Lackawanna, or any similar word?" Answer: "No, sir." He was further asked (Q. 86, fol.
31 142): "Have you any personal knowledge as to whether the word Lackawanna was first used as the name of a district or as the name of a river, or as the name of the complainants' coal?" Answer: "I have no distinct recollection of that."

The sales agent of the company, Mr. James C. Hartt, was asked upon the stand (Q. 77, fol. 51): "Do you know whence the name of Lackawanna is derived?" Answer: "I do not."

The President of the company, Mr. Thomas Dickson, was asked (Q. 93, fol. 227): "How long

has the Lackawanna coal region been known by 32
that name?" Answer: "That is farther back than I can go. I have lived there for over thirty years. The region had been known as such before I was born." As Mr. Dickson states, in answer to the first question put to him, that he is forty-five years of age; if the valley was known as the Lackawanna Valley before he was born, it was certainly known by that name some time before the organization of the complainants, which was in 1825, (fol. 3.) 33

This is the testimony of the three principal witnesses for the complainants themselves—their President, their sales agent, and their Treasurer, who swore to their Bill of Complaint.

The proof furnished by the printed books, newspapers, circulars, and other exhibits offered by the defendant, refers to two general points. *First*, that the name Lackawanna was *not* devised, invented or adopted by the complainants as the name for their coal, but, on the contrary, was the 34
name of the valley or region in which that coal is mined, a very great number of years before their company had any organization; and *secondly*, that the coal mined by the Delaware, Lackawanna and Western Railroad Company, and that mined by the Pennsylvania Coal Company, is just as truly and really Lackawanna coal, and is just as regularly and as properly placed in the statistics of the trade as Lackawanna coal, as is that mined by the complainants. 35

In the first place, then, to show that the name Lackawanna is not a device or invention of the complainants, but that it was the well known name of a well defined geographical district fifty years before the company was organized, we cite, from a work entitled "Early Methodism," published by Carleton & Porter, in this city, in 1860, and shown to be a standard work, the following extract from the diary of Mr. William Colbert, the pioneer preacher of Methodism in the Wyo-

36 ming or Lackawanna Valley, under the date of Friday, November 29, 1793 (which it will be remarked was over thirty years before the organization of the company of the complainants):

"Rode from Meshoppen to Tunkhannock, where I met with sister Sutton, who lives at *Lackawanna*, with Eliza Benedict. * * * * We then crossed a mountain, over to *Lackawanna*."

This would seem to show, as clearly as it would be possible to demonstrate it, that this region was
37 known in the year 1793, by precisely the same name by which it is known at the present day.

On the tenth page of "Hollister's History of the Lackawanna Valley," published by W. H. Tinson, in New York, 1857, it is stated that the name Lackawanna is a corruption of the Indian Lahawhanna, the two names signifying the meeting of two streams.

On page 62, of that work, the following language is used, referring to the year 1771:
38 "Lackawanna, or Lockaworna, as it was then "designated," &c., &c., and also "Lackawanna "then the furthest up the Lackawanna Valley of "any of the existing districts." "In regard to "this, it was voted, April 25, 1772, by this Com- "pany, that those thirty-five men that is now in "ye township of Lockaworna shall be entitled to "all the Companies' right to said township."

From page 66, we quote, that in the next year, 1772, Barnabas Carey sold his claim to "the eight
39 meadow lot in the township of *Locknaworna*," &c.

On the same page we find, one Francis voted "the settling right in *Lockaworna*, in December, "1771."

On page 72, in a verbatim extract from a deed dated 1774, we find the river, running through that valley or region, spoken of as the *Lackaworna River;* and another instance of the same kind on page 75.

There was also offered in evidence a copy, certified by the Recorder of Deeds in and for the

County of Luzerne, in the State of Pennsylvania, of a conveyance made on the 18th day of January, in the year of our Lord, 1796, to which the attention of the Court is particularly called, and in which there is mention made of "lands lying, and being in upper settlement, so called, and abutting on each side of the *Lackawanna*."

This deed, which is from John Staples to Isaac Tripp, shows beyond the possibility of question, that more than thirty years before the organization of the complainants' Company, the river running through this region, and the district through which it ran, were each known by precisely the same name, even to a letter, as that by which they are now designated.

The attention of the Court, so far as this subject is concerned, is also respectfully invited to the following works, which were offered in evidence upon this subject: "Hollister's History of the Lackawanna Valley," "The History of the Wyoming," by Charles Miner; "Wyoming, its History, romantic adventures, &c.," by George Peck, D. D. "Chapman's History of Wyoming," "Daddow's map of the Coal Fields of Pennsylvania," and "Schaffer's Map of the Anthracite Coal Fields of Pennsylvania."

Each of these works will be found to contain abundant evidence in the marked passages of the correctness of the positions for which we contend.

II. The coal mined and produced by the Delaware, Lackawanna and Western Railroad Company, and by the Pennsylvania Coal Company and other miners in the Lackawanna Coal Region, is regarded by the trade and by its statistics as Lackawanna Coal, as genuine and veritable as that mined and produced by the complainants. This proposition is fully proved by both documentary and oral evidence.

44 It was shown in the testimony that the two leading journals of the United States, so far as the coal trade is concerned, are "The United States Railroad and Mining Register," published in Philadelphia, and "The Miners' Journal of Pottsville." A large number of extracts from these two journals were offered and marked in evidence, going to prove unquestionably that the coal of the three great companies to which we have referred are all placed in the statistics of the trade,
45 under the general name of Lackawanna, and are never placed under any other heading, or described or spoken of in any other manner.

"Exhibit Number One contains extracts from the "Miners' Journal of Pottsville." All of the Lackawanna coal spoken of in these advertisements as coming by the way of Elizabethport is the coal of the Delaware, Lackawanna and Western Company, to which, as the complainants contend, the name of Scranton is alone applicable.
46 Yet, it will be found in each of these notices, and in almost all of these advertisements of prominent dealers in the trade, that the coal from Elizabethport, in New Jersey, is invariably spoken of as Lackawanna coal.

Exhibit Number Two also contains extracts from the "Miner's Journal," from which the same facts are apparent. It will be seen that the entire coal trade is classed under the three general heads, Lehigh, Schuylkill and Lackawanna; and that
47 the coal coming from Elizabethport, which is that of the Delaware, Lackawanna and Western Railroad Company, and the coal of the Pennsylvania Coal Company, and the coal of the Deleware and Hudson Canal Company, the complainants', are all invariably classed under the same head, and treated in the same manner.

Exhibit Number Three contains extracts from the "United States Railroad and Mining Register," of "Philadelphia; from the "Evening Telegram;" from "Saward's Coal Freight Circular," and from the "New York Tribune."

In the first of these extracts, from the United 48
States Railroad and Mining Register, of Philadelphia, first under the heading "Lackawanna Coal Trade, come the Delaware, Lackawanna and Western Railroad;" and second, "Coal of the Pennsylvania Coal Company." In another of these extracts, the first Company ranking under the Lackawanna Coal Trade, is the "Delaware, Lackawanna and Western;" in the second of them, it is placed under that heading, and in the third of them, it is placed first under that head, 49
and the "Delaware and Hudson Canal Company" second.

The extract from "Saward's Coal Freight Circular" is headed "Lackawanna Coal Trade," and under this heading we have, first, the production and shipment of "The Delaware, Lackawanna and Western Railroad Company;" second, that of "The Delaware and Hudson Coal Company," and third, that of "The Pennsylvania Coal Company." The extract from "The 50
Tribune" is chiefly significant, by reason of its first sentence, which is: "In the Lackawanna region the companies have achieved a triumph which, we think, will prove to have been injurious to them," referring, unquestionably, to the three great companies whose coal is ranked by the "Mining Register" invariably under the heading "Lackawanna Coal."

Exhibit Number Four consists also of extracts from "The United Railroad and Mining Regis- 51
ter." It will not be necessary to refer at length to these extracts in this place. The coal of the Delaware, Lackawanna and Western Railroad Company, and of the Pennsylvania Coal Company, is invariably ranked under the head of "Lackawanna Coal." In the extract under the date of January 4, 1868, we find this expression, "The use, too, which is made by the three Lackawanna Companies." * * * * "The Lackawanna Companies did not develop the coal trade

of Pennsylvania," etc., etc. In the extract from that paper, under date of February 22, we find the expression, "The three Lackawanna Companies make very small local deliveries," etc., etc. It is difficult to see how, in view of this invariable classification and ranking of these coals, the position of the complainants is tenable for a moment.

It is not deemed necessary to multiply quotations from these exhibits, or comment upon them. It is safe to make the broad assertion that the Court will find in every one of these very numerous citations from all of these publications, both those of a permanent and those of an ephemeral character, containing, as they unquestionably do, reliable and authoritative statistics of the coal trade, and constituting all the testimony of this character which has been produced, that the coal which the complainants assert should be and is known only as Scranton, and that which, as they assert, should be and is known only as Pittston, are just as invariably classified and regarded as Lackawanna coal as is that produced and sold by themselves. It is not too much to say that this species of testimony is of the very greatest weight. In the first place, it is beyond all question impartial. It is not, nor can it be prepared for the purpose of a trial, and it is not nor can it be the expression of opinion of men blinded by prejudice or having a personal interest in the result of the litigation. It is the expression of the COAL TRADE to which both this complainants and this defendant belong.

The general expression of opinion and of knowledge of fact of those best qualified to know and most authorized to speak, is that the coal coming from the Lackawanna region is known by the generic name of "Lackawanna Coal," without regard to the person or company mining it or introducing it. And the same is true of the coal coming from the other great coal regions, "The Lehigh" and "The Schuylkill."

This proposition expresses generally the view 56
taken by the defendant in regard to this matter, and is supported, as will be shown by a great array of testimony, as well as by all the reason and common sense of the case. It is not equally easy to say exactly what is the position of the complainants upon this point. Their principal officers who were upon the stand during the examination, and who all profess to be experts in the matter, differed as as widely as possible, one from the other, as to what constituted Lackawanna 57
coal. The defendant alleges and claims to have proved that the facts are substantially as follows: That there are three great coal districts or regions in the State of Pennsylvania, one of which is called the Lehigh, another the Schuylkill, and the third the Lackawanna. That all coal mined and produced in the Lehigh and Schuylkill districts respectively is known to the trade and to the public, and is offered for sale under the general names of Lehigh and Schuylkill. That while 58
these names are generally applied to all of the coal mined and produced in each of said regions, the greater part of the principal companies and partnerships have specific and local names by which their particular varieties of coal are intended to be designated. That all the coal that is mined and produced in the Lackawanna valley is known generally to the trade and the public as Lackawanna coal, whether it be mined and sold by one or the other of the three great companies 59
carrying on their operations in that section, the Delaware and Hudson Canal Company, the Delaware, Lackawanna and Western Railroad Company, and the Pennsylvania Coal Company. In his view of the matter all the coal mined in that valley or region is Lackawanna coal. As we have said, the real view of the complainants is not so easily arrived at. The allegations in their complaint that they invented this name Lackawanna as a special designation for their coal, and

60 that it was not known as the name of a region or valley until after such invention by them, have already been demonstrated to be entirely without foundation. Apart from this, however, their complaint avers that their coal has always been known particularly and exclusively as Lackawanna, and it is at least to be implied from this that no other coal is properly known by that name, and yet, as before mentioned, no two of their prominent officers, when examined as experts, seem
61 to have any definite view as to what Lackawanna coal really is. For instance, Mr Hartt, their sales agent, stated in his answers to questions 120 and 123, that Eaton & Company and the Boston and Lackawanna Coal Company mined *Lackawanna coal.* Mr. Dickson, the President of the Company, states with equal distinctness that the Boston and Lackawanna Coal Company *do not mine* Lackawanna coal.

Q. 65. Do or do not the Boston and Lack-
62 awanna Coal Company mine Lackawanna coal?

A. They mine coal upon the Lackawanna river; they do not mine Lackawanna coal.

Now here is a flat contradiction, and yet each of these gentlemen was endeavoring by these widely different paths to reach the same point. Each knew that he must stoutly maintain that the coal of the complainants was the only Lackawanna coal. Now, Mr. Hartt had admitted that the Delaware and Hudson Canal Company sold the coal
63 of the Boston and Lackawanna Coal Company as and for their own Lackawanna coal. It was consequently impossible for him to assert that the coal of the Boston and Lackawanna Coal Company was not genuine, veritable Lackawanna coal. But the President, Mr. Dickson, not having cramped himself by any such previous admission was enabled to adhere staunchly to the general line of complainants' testimony and argument, viz.: that *no* coal except that mined and produced by the Delaware and Hudson Canal Com-

pany themselves is or ever was or ever could be genuine Lackawanna. Mr. Dickson seemed to imply subsequently in his testimony that the piling and mixing of coal at the Company's great depot at Honesdale was the process by which genuine Lackawanna coal was produced. This, however, is clearly absurd, and for this reason, if for no other. The piling of coal at Honesdale, to any great extent, is only during the Winter season when the canal of the complainants is closed, and they are unable to transport their coal to Rondout. During that portion of the year when their canal is open, and its regular carrying business proceeds unimpeded, the accumulations of coal at Honesdale are, comparatively, unimportant. According, therefore, to Mr. Dickson's intimated theory there is not so much Lackawanna coal brought to market in Summer as in Winter, and even the coal brought to market by the complainants themselves in the latter part of the season is not so truly and veritably Lackawanna as that accumulated by them during the Winter, because the former loses the benefit of the piling and mixing process at Honesdale. This testimony of Mr. Dickson is, perhaps, sufficiently singular to deserve citation. He was asked: 64 65 66

Q. 66. Do not the complainants sell the coal received from this company (the Boston & Lackawanna Coal Company) as Lackawanna coal?

A. They sell the coal of that Company as Lackawanna coal after it is made such by the mixing process at Honesdale. 67

Q. 67. Did they ever sell coal as Lackawanna produced by other producers without mixing it as you have described?

A. Not that I am aware of.

Q. 68. Then it is mixing that makes it what you call Lackawanna coal?

A. Yes, sir; mixing and general preparation. I mean the mixing, rehandling, rescreening, and reshipping. The coal is brought by railroad to Honesdale; there it is loaded into canal boats.

68 Q. 69. Describe the process of mixing.

A. We dump from cars upon piles and in pockets; from the pockets through screens into boats.

According to the allegations and testimony of the complainants, therefore, we have three distinct theories as to what constitutes the genuine, veritable, simon-pure Lackawanna, and each of these theories is entirely inconsistent with the other two. The Bill of Complaint verified by the Treasurer, Mr. Isaac N. Seymour, says that it is
69 the coal mined and produced by the Delaware & Hudson Canal Company, and by them alone; that is the veritable Lackawanna. The testimony of Mr. Hartt, the sales agent, says, substantially, that any coal purchased by the complainants and sold by them (as, for instance, the coal of the Boston and Lackawanna Coal Company, and the other companies and firms mentioned by him), is the genuine Lackawnnna. In other words, to make any given variety of coal Lackawanna,
70 genuine and unmistakable, it is not necessary that the complainants should mine and produce it, but only that in the first instance they should purchase it. The testimony of Mr. Dickson further discloses a third theory far more ingenious than either of the others, viz: that no coal, no matter by whom mined or where mined, is Lackawanna until it has been "made such by the mixing process at Honesdale." The coal of the Boston and Lackawanna Coal
71 Company, which Mr. Hartt says is Lackawanna, Mr. Dickson says is not such, until it has been "dumped from the cars upon piles and in pockets, and from the pockets through screens into boats" by the complainants.

It is submitted, however, that the testimony of both of these gentlemen is not less consistent with the allegations of their own bill of complaint than with the statements of each other. And, it must be conceded that the complainants have entirely failed to furnish to the Court any testimony upon

which a sound judgment can be framed as to what really constitutes "Lackawanna coal." 72

Upon this subject the attention of the Court is respectfully called to the following extracts from the testimony:

The complainants called as a witness in their behalf Mr. Robert Yellowlee, who testified that he had been for twenty-seven years selling coal as agent for the Delaware & Hudson Canal Company. He was asked the question:

Q. 21. Is not all the coal taken from the Lackawanna coal region known as Lackawanna coal in the trade? 73

A. It is, to the best of my knowledge. I have never heard of anything else.

Q. 22. Do you know of a coal region known as the Lehigh coal region?

A. I have always heard of it.

Q. 23. Is not the coal taken from that region usually known as Lehigh coal?

A. To the best of my knowledge it is. 74

Mr. Thomas Dickson, the President of the complainants, was asked:

Q. 46. Do you know from what source the names of Schuylkill and Lehigh, as applied to coal, are respectively obtained?

A. The general deposit of coal being located along those rivers and in the regions known respectively as the Schuylkill and Lehigh coal regions.

Q. 34. Do you know, of your own personal knowledge, that the name Lackawanna had not been applied to coal by any other parties before the complainants? 75

A. I do not. No, sir.

Q. 36. State whether, or not, the coal produced by the complainants, by the Delaware, Lackawanna and Western Railroad Company, and by the Pennsylvania Coal Company, is all mined in the same region or valley?

A. There are two valleys, one the Lackawanna,

76 and the other the Wyoming. The coal of the three companies is mined in these two valleys.

Q. 37. Does not each of the three companies own mines in either of the two valleys?

A. Yes, sir.

Q. 38. What are the names of the other large coal regions in the State of Pennsylvania?

A. The Schuylkill and Lehigh.

Q. 39. Is not all the coal coming from those two regions, respectively, known generally in the mar-

77 ket as Schuylkill and Lehigh coal?

A. *Yes.* There are different varieties, having local names.

The testimony of the defendant, Mr. Clark, was as follows:

Q. 5. Under what name do you buy and sell coal coming from the Lackawanna region?

A. Lackawanna coal.

Q. 6. How long have you done so?

A. For about twenty-nine years as clerk and in

78 the business.

Q. 7. Give the names of the companies and individuals that mine coal in the Lackawanna region?

A. The Delaware, Lackawanna and Western Railroad Company, the Pennsylvania Coal Company, and the Delaware and Hudson Canal Company are the principal miners. There are some others that I do not recollect the names of.

Q. 8. Under what name is the coal mined by the

79 companies mentioned in your answer generally designated and sold by dealers in coal?

A. They designate it in the trade and by the statistics and sell it as Lackawanna coal.

Q. 9. How long has this been the case?

A. Ever since I have been in the business so far as my knowledge extends.

Q. 12. State whether or not there are other large coal districts besides the Lackawanna, and if so by what name are they known?

A. The Schylkill and Lehigh regions.

Mr. Clark goes on to testify that the coals coming from the Lehigh and Schylkill regions are known generally in the trade as Lehigh and Schuylkill coals. 80

Q. 19. State whether or not the coals of the Delaware, Lackawanna and Western Railroad Company and the Pennsylvania Coal Company are taken from mines adjacent to the mine of the complainants?

A. They are. The mines of the complainants, some of them, are in Scranton—adjoining the mines of the Delaware, Lackawanna and Western Railroad Company. 81

Q. 31. For how long a period have you been in the habit of selling as Lackawanna coal the coal of the Pennsylvania Coal Company and the coal of the Delaware, Lackawanna and Western Railroad Company?

A. Ever since it has been in market.

Mr. William E. Dodge testifies that he has been conversant with the mining of coal in the Lackawanna region or valley for twenty-three years. He was asked: 82

Q. 4. Under what name is the coal coming from that region or valley known in the market?

A. Coal from the Lackawanna and Wyoming valleys.

Q. 5. From what region does the coal come which is sent to market by the Delaware and Hudson Canal Company, by the Delaware, Lackawanna and Western Railroad Company, and by the Pennsylvania Coal Company? 83

A. It comes from the Lackawanna and Wyoming valleys.

A. To question 6. They are the principal producers and sellers of coal and transporters.

A. 7. In many instances their mining is directly contiguous to each other. The general character of the coal in the valley is the same.

A. 8. As a matter of convenience, the Delaware, Lackawanna and Western Railroad Company call

76 and the other the Wyoming. The coal of the three companies is mined in these two valleys.

Q. 37. Does not each of the three companies own mines in either of the two valleys?

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The testimony of the defendant, Mr. Clark, was as follows:

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A. Lackawanna coal.

Q. 6. How long have you done so?

A. For about twenty-nine years as clerk and in

78 the business.

Q. 7. Give the names of the companies and individuals that mine coal in the Lackawanna region?

A. The Delaware, Lackawanna and Western Railroad Company, the Pennsylvania Coal Company, and the Delaware and Hudson Canal Company are the principal miners. There are some others that I do not recollect the names of.

Q. 8. Under what name is the coal mined by the

79 companies mentioned in your answer generally designated and sold by dealers in coal?

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Q. 9. How long has this been the case?

A. Ever since I have been in the business so far as my knowledge extends.

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A. It comes from the Lackawanna and Wyoming valleys.

A. To question 6. They are the principal producers and sellers of coal and transporters.

A. 7. In many instances their mining is directly contiguous to each other. The general character of the coal in the valley is the same.

A. 8. As a matter of convenience, the Delaware, Lackawanna and Western Railroad Company call

84 their coal "Scranton coal from the Lackawanna valley," simply because it is shipped from that point, to designate it from other transporting companies, as it is started from Scranton, from different quarters of the Lackawanna and Wyoming region or valley.

Mr. Dodge stated further, upon cross-examination by complainants' counsel, as follows:

Q. 42. Do you consider it an honest transaction that the Delaware, Lackawanna and Western
85 Railroad Company should assume the name of Lackawanna coal, knowing that it had been used by another Company at least twenty years before its existence?

A. Perfectly honest, and would be so for any other Company who should go into the Lackwanna valley and take out the coal and offer to sell it.

Mr. Moses Taylor was examined as follows:

Q. 3. Under what name is the coal coming from the Lackawanna region known in the market?

86 A. Lackawanna coal.

Q. 4. From what region does the coal come that is sent to market by the Delaware and Hudson Canal Company, the Delaware, Lackawanna and Western Railroad Company, and the Pennsylvania Coal Company?

A. The Lackawanna Valley.

Q. 7. State whether or not you ever represented to the defendant Henry C. Clark, and to others, that the coal mined by your company was Lacka-
87 wanna coal?

A. I have never called it anything else.

Upon cross-examination, Mr. Taylor stated, as Mr. Dodge had done, that their coal was sometimes designated as Scranton coal, from the Lackawanna Valley. He was asked—

Q. 17. Does your company ever sell coal of its own production and call it Lackawanna coal, without any addition or explanation of any kind, in any manner qualifying the term Lackawanna?

A. We call it coal, and sell it as Scranton or Lackawanna coal, and it is all the same thing, coal from the Lackawanna Valley by the way of Scranton. 88

A. 18. I call it Lackawanna coal. We may use Scranton, because Scranton and Lackawanna coal is all one and the same thing.

A. 19. We sell it as Lackawanna coal, or as Scranton coal either.

Q. 20. Did your company ever, to your knowledge, sell a pound of coal of its own production, and call it Lackawanna coal, nothing more or nothing less than those two words; and if so, when and to whom? 89

A. We have sold it to Mr. Clark, thousands and thousands of tons. I have bought it myself by that name and used it.

Mr. William Mershon, after testifying that he had been in the coal business since 1848 or 1849, and testifying that the three principal companies in the Lackawanna region were the Delaware and Hudson Canal Company, the Pennylvania Coal Company, and the Delaware, Lackawanna and Western Railroad Company, was asked this question: 90

Q. 9. How are the coals of these companies placed in the statistics of the trade and known among dealers?

A. As Lackawanna coal.

Q. 10. What books or papers or other authorities so place them? 91

A. The Miners' Journal, of Pottsville, and a book called "Coal, Iron and Oil." There are no others that I can refer to just now.

Mr. Mershon stated that his own business was chiefly in Lehigh coal, and, after enumerating a number of varieties of that species of coal, he stated that they were all known generally among dealers in the trade as Lehigh coal.

92 Mr. Thomas N. Pearce, of Providence, a part of whose testimony has been before referred to, in response to a similar question as to the coal of these three companies, stated:

"They do come from the *Lackawanna regions*, and they are known, sold, and placed in the statistics of the trade as Lackawanna coals, and they have been known and sold under that name for ten years or more." In answer to the second cross-interrogatory put to him, Mr. Pearce stated
93 further: "I sell it, *i. e.*, the coal of the Delaware, Lackawanna and Western Railroad Company, sometimes as white ash, sometimes as Lackawanna, sometimes as Scranton. I have sold it by such names ever since I have been in the business. I have sold the coal of the Delaware, Lackawanna and Western Railroad Company by the simple name of Lackawanna coal from the Lackawanna coal regions.

Mr. Stephen S. Salisbury, who testified that he
94 had been for twenty-seven years a dealer in coal in the city of Providence, said, in answer to the second cross-interrogatory, (similar to the one put to Mr. Pearce), "I buy it as Scranton coal, coming from the Lackawanna Valley or region. I sell it for Lackawanna, Scranton, or grey or white ash."

A. 4. I have sold Scranton coal by these names for the last ten or twelve years. I have sold Scranton coal by the simple name of Lackawanna coal.

95 Mr. W. W. Pierce, of the same city, testified to the same general effect, that he had sold the coal of the Delaware, Lackawanna and Western Railroad Company by the simple name of Lackawanna coal, and his testimony is, in other respects, on this point almost precisely similar to that of Mr. Salisbury.

Mr. Edward A. Quintard, one of the complainants' witnesses, who testified that he had been engaged in the coal business for about twenty

years, testified, upon cross-examination, as follows: 96

Q. 27. State whether or not to your knowledge dealers in coal do not sell the coal of the Pittston and Scranton Companies as Lackawanna coal?

A. I should say they do.

Q. 28. For how many years do you know this to have been done?

A. Ever since Scranton and Pittston *has* been in the market.

Mr. William H. Hopkins, another witness 97 called on the part of the complainants, was asked:

Q. 31. State whether or not dealers in coal in the city of Providence, or elsewhere, do not to your knowledge sell the Scranton or Pittston coals, or either of them, as Lackawanna coal?

A. My impression is, that they do sell Scranton, and they have done so for five years, more or less.

In view of these facts, it cannot be disputed that the complainants have been fully cognizant for a long period, that the coal of the Delaware, 98 Lackawanna and Western Railroad Company and of the Pennsylvania Coal Company was known among dealers in coal as Lackawanna coal, and so dealt in by them with the public and so treated in the statistics of the trade, to which allusion has before been made. This is believed to be the first suit which has ever been brought by the complainants for the purpose of maintaining their right to this so-called trade-mark. This is certainly a significant fact and one worthy of es- 99 pecial notice, for it has been shown that they had been aware during a great number of years that many others were continually doing just that which they now seek to punish this defendant for doing, without one word of remonstrance or complaint on their part. And it would seem to furnish as strong an argument as could well be imagined, not only to prove that they are not in fact entitled to any such exclusive possession of the word Lackawanna as they now pretend, but that

100 they have not in past years, and indeed until very recently dreamed themselves of putting forth such a pretence.

On this subject it may be well to notice some further facts which appear in evidence, going to prove still more clearly that this knowledge was in fact in their possession. The averment of the complainant is that the Delaware and Hudson Canal Company have "*lately ascertained*" that the defendant was wrongfully selling and offering
101 for sale Scranton and Pittston coal by the name of and as and for "Lackawanna coal. Mr. Walter Lawton's testimony proves clearly that twelve years ago the fact that Mr. Clark and others in New England were selling the so-called Scranton and Pittston coals under the name of Lackawanna was clearly and distinctly brought to the notice of Mr. Soulter, the Vice-President of the Company, and that it was in consequence of that fact that the "Old Company" sign, which has
102 been refered to, was erected in the city of Providence. The circular issued by the complainants, January 24, 1860, states distinctly "that coals not coming from our Company are largely sold in the Eastern States and delivered as genuine Lackawanna." This circular was addressed to their customers and the public generally, and shows that at least seven years before this suit was commenced the complainants were not only aware that other parties were doing that which they now
103 complain of the defendant for doing, but that it was being very largely done at least in the New England States. Mr. Lawton's testimony is not only in direct corroboration of this, but goes to the extent of showing that the present defendant, Mr. Clark, was one of the very parties concerning whom the complaint was then made. It cannot therefore be pretended for a moment that this action on the part of Mr. Clark has "*lately*" come to the knowledge of the complainants. On the contrary, it is shown in the

most distinct manner that they were fully in- 104
formed of it, at least nine years ago; that they were fully informed not only that he was making such sales, but were aware that such sales were largely made by others, and yet, from time to time up to the commencement of this suit, not one word of remonstrance or complaint was heard from the Delaware and Hudson Canal Company, not one assertion on their part, or on the part of any one speaking for them, that this conduct of the defendant and others was illegal, or that it was even 105
improper. In fact, the stress of the caution given in the circular is laid upon the alleged fact that the parties to whom these so-called Scranton and Pittston coals were sold for Lackawanna coal were deceived in making these purchases by the impression that they were buying the coal of the complainants. Now, upon this point we examined Mr. Isaac N. Seymour, the complainants' Treasurer, and examined him partly because the verification of their bill of complaint was by him. He 106
was asked this question:

Q. 80. When did you or the complainants, to your knowledge, first hear of any person selling the coal produced by any other parties than the complainants under the name of Lackawanna?

A. I have no personal knowledge—nothing but hearsay. I first heard of it two or three years ago, that Mr. Clark was selling coal under our name.

Q. 81. Was that the first time, to your knowl- 107
edge, that the complainants even heard of coal, other than their own, being sold as and for Lackawanna coal?

A. I do not think it was the first time. Retailers of very little responsibility called other coal than ours Lackawanna coal. I have heard such reports for six or seven years, that persons were selling coal for Lackawanna when it was not.

Q. 82. Have not you known that fact for a longer period than you mention?

108 A. I presume so. I have no doubt it is longer than that.

Further, we would call attention to the testimony of Mr. Hopkins on this point. He, as will be remembered, is the agent of the complainants in the city of Providence.

Q. 27. Have you known of the defendant sel ling Pittston or Scranton coal in the city of Providence as Lackawanna coal, and, if so, for how long?

109 A. During the year that the complainants had a yard in Providence, which I think was in 1860. About that time my attention was called to the fact by Mr. Soulter, the President. I may have known it before.

It will be seen from his answers to questions 29 and 30 that Mr. Hopkins was unable to state positively that his own firm or persons in their employ had not, during the last ten years, sold as and for Lackawanna coal, coal of the Delaware, Lacka-
110 wanna and Western Railroad Company, or that of the Pennsylvania Coal Company. He was asked:

Q 31. State whether or not dealers in coal in the city of Providence and elsewhere, do not, to your knowledge, sell the Scranton or Pittston coal, or either of them, as Lackawanna coal?

A. My impression is that they do sell Scranton, and they have done so perhaps five years, more or less.

111

III. The name Lackawanna, as applied to coal, has not been used *exclusively* and *distinctively* by the complainants since they have been engaged in the business of producing coal and bringing it to the market; nor have they any peculiar or exclusive right of property in that name.

The position of the complainants, in seeking to establish their right to the word Lackawanna as

a trade-mark, compels them to support two 112
points: the first, that they have used the word distinctively as an appellation for their coal—that is, that they have called their coal by no other name; that since the period of its adoption by them they have not, through their recognized agents and otherwise, allowed dealers in coal to know the coal mined and produced by them under any other name than that of Lackawanna coal, without any addition, subtraction, or qualification to that name. Secondly, they are com- 113
pelled to allege and prove that their use of it has been an exclusive one; that no other producers of and dealers in coal have had a right to use that name, and have, in fact, used it.

First.—It is proposed to show that the complainants' have sold other coal than their own, under the name of Lackawanna coal. It will be remembered that the allegations of the bill of complaint are distinctly, to the effect that the coal 114
mined and produced by them, is the only coal entitled to be called Lackawanna, and yet, by their own officers, it was proved that large quantities of coal, neither mined nor produced by them, and consequently, according to their theory, by no means entitled to this name, have been sold by the complainants under that very designation, having been purchased by them from other parties.

Mr. Hartt, the complainants' sales agent, testi- 115
fied as follows (fol. 73, *et seq.*):

Q. 177. How and by whom was the coal of the Pennsylvania Coal Company, for the first two years, brought to market and sold?

A. *It was brought to market and sold by the complainants, being mixed with the coal of the complainants at Rondout.*

Q. 178. Was it not cleaned and prepared by the complainants before it was sold?

A. *Nothing further than the usual screening*

116 *at the point of shipment. It was prepared at the mines by the Pennsylvania Coal Company.*

Q. 179. By what name was that coal sold when thus mined?

A. *It was sold as Lackawanna coal.*

Q. 180. State whether or not the Pennsylvania Coal Company knew that their coal was mixed with the coal of the complainants, and so sold by the name of Lackawanna coal?

A. They did. It was sold by the complainants
117 in pursuance of a written agreement between the two Companies?

Q. 181. When did the complainants cease to sell the coal of the Pennsylvania Coal Company?

A. In the early part of the year 1852.

Next came Mr. Isaac N. Seymour, the Treasurer of the Company, who was asked (fol. 126, *et seq.*):

Q. 53. Do you not know of the complainants having sold coal of the Pennsylvania Coal Company, under the name of Lackawanna?

118 A. We sold coal for the Pennsylvania Company for one year, I believe. *We sold it as our coal.* We sold the Pennsylvania and our Company's together.

Q. 54. Can you state in about what year that was? State as near as you can.

A. Well, from 1850 to 1865, as near as I can recollect. I have no distinct recollection of the year.

Q. 61. Do you not know that coal, mined by
119 other parties than the complainants, has been sold by them under the name of Lackawanna?

A. As far as the Pennsylvania Coal Company is concerned, we have. I don't know of any other.

Mr. Hartt, the sales agent, when further examined upon this subject, testified (fol. 52, *et seq.*):

Q. 87. About what quantity of coal, mined by the Pennsylvania Coal Company, was sold by the complainants under that contract?

A. According to my recollection, the whole 120
quantity was something over 400,000 tons.

Q. 89. By what name was that coal sold?

A. By the same name as that mined by the complainants. The two were mixed together and sold as Lackawanna coal.

Q. 88. Since the year 1850 have the complainants sold any other coal mined in that valley as Lackawanna coal, than such as they have mined themselves?

A. They have. 121

They aver in their bill of complaint now, that they are greatly damaged, defrauded and wronged, because the defendant sells the coal of the Pennsylvania Coal Company under the name of Lackawanna. We prove, by their own Treasurer and Sales Agent, that in the years designated they did this very thing themselves, to the extent of at least 400,000 tons—upwards of twenty years after they allege they adopted the name Lackawanna as 122
their distinctive and peculiar trade mark. If the selling of the coal of the Pennsylvania Coal Company, under the name of Lackawanna, be a fraud upon the public now, it was none the less a fraud in 1852, when the complainants set the example; and so far as that coal is concerned, they are certainly estopped by their own action from asserting that it has no claim to be called Lackawanna, and equally estopped whether the claim be made in behalf of the public or of themselves.

123

The defendent did not rest with proof that the complainants had sold the coal of the Pennsylvania Coal Company under the name of Lackawanna. Mr. Hartt, their Sales Agent, was further examined, as follows (fol. 57, *et seq.*):

Q. 120. Have you not purchased largely of Eaton & Company, of Archibald, Pennsylvania?

A. Eaton & Company mined Lackawanna coal for the Delaware and Hudson Canal Company to

124 a considerable extent, but how largely I cannot say, without reference to the books.

Q. 121. Do not the complainants obtain coal from the Elk Hill Coal Company, at Dickson, Pennsylvania?

A. I believe they do, in the same manner as from Eaton & Company.

Q. 122. Do not the complainants obtain coal from John Jermyn, at Rochdale, Pennsylvania?

A. They did in former years, but I am not sure
125 that they do at present. I think the mine has changed hands.

Q. 123. Have not the complainants obtained large quantities of coal from the Boston and Lackawanna Coal Company, at Archibald, Pennsylvania?

A. They have, in the same manner as from Eaton & Company; how large quantities I cannot say, without reference to the books.

Q. 124. For how long a period have the com-
126 plainants obtained coal from the Company last referred to?

A. The precise time I cannot recollect. I think it is about six or seven years ago; at all events, it includes the whole length of time the said Company have leased the mine from which the coal is taken.

Q. 125. Is the coal mined by Eaton & Company at Archibald, or by the Elk Hill Company, at Dickson, or by John Jermyn, at Rochdale, or by
127 the Boston and Lackawanna Coal Company, at Archibald, taken from mines belonging to the complainants?

A. I cannot answer, for I really do not know. I know that some of those lands formerly belonged to the Company, but whether they do now, or not, I do not know.

Q. 126. Each of those Companies and firms are entirely separate from the complainants, are they not?

A. They are.

Q. 127. How or by what name have you sold 128
the coal obtained from the firms and companies above referred to?

A. By the name of Lackawanna coal, the same as all the rest of the Company's mining.

Mr. John Endicott, who has been a sales agent for the Delaware and Hudson Canal Company since 1840, produced as a witness on their behalf, testified that he had sold from their yard, under his charge, the coal of the Pennsylvania Coal 129
Company, as and for Lackawanna; that he had sold the coal produced by the Delaware, Lackawanna and Western Railroad Company from that yard, without, as a general thing, informing the smaller class of purchasers that it was Scranton coal, and not the coal of the complainants; and that, while he was making such sales of the so-called Scranton and Pittston Companies, his printed form of bill-head, bearing the name Lackawanna printed upon it, was not altered in any 130
manner. (Fols. 83, 84.)

The defendant himself, and a number of the witnesses produced in his behalf, testified very fully and emphatically to most of the above facts, and particularly to the fact of the large sales by the complainants of the coal of the Pennsylvania Coal Company as and for their own, and under the name of Lackawanna coal. It is not thought necessary to extract this testimony here, as it is not presumed that the fact can be denied. 131

Second. It is proposed to show from the testimony that the complainants have sold their own coal repeatedly and habitually under another name than that of Lackawanna coal. In other words, to show that their claim to that word is no more distinctive than it is exclusive.

We will first call the attention of the Court, on this subject, to the testimony of the defendant, Mr. Henry C. Clark, who testified that he has

132 been for twenty-nine years in the coal business, at the city of Providence. He was asked (fol. 156, *et seq.*):

Q. 23. State whether, or not, the complainants have ever sold their coal in the market by any other name than that of Lackawanna coal?

A. They have.

Q. 24. When, and where, and whose coal have they so sold?

A. Sold it at Providence, and coal produced
133 by themselves. They have so sold it for many years by other names than Lackawanna coal. They have sold it for "Old Company's Lackawanna coal," as being the product of the Pennsylvania Coal Company and the Delaware and Hudson Canal Company's mines. The latter is a quotation from their circular advertising the same.

Q. 25. For how many years has the coal of the complainants been sold as mentioned in your last answer?

134 A. So far as the coal they sold, mined by the Pittston Company, is concerned, it was sold in 1850 or 1851. "Old Company's" has always been sold under that name.

Q. 26. State whether or not you mean to be understood as saying that the complainants have sold the coal of the Pennsylvania Coal Company as their own, and under the name of Lackawanna?

A. The first Pittston coal I ever bought I received from this Company as Lackawanna coal,
135 and sold it as Lackawanna coal. I mean the Delaware and Hudson Canal Company.

Mr. Clark further stated, (Answer 28), that Manchester, Hopkins & Company were the only persons known in the trade as agents of the complainants, or parties having the sale of their coal, and that this had been the case for several years. Further, that there was a sign adjoining defendant's premises which had been occupied by this firm and by the Delaware and Hudson Canal Company, bearing the words,, "Old Company's Lackawanna Coal."

The defendant further offered in evidence, upon 136
this point, the circular issued from the office of the Delaware and Hudson Canal Company, 29 William street, corner of Exchange Place, New York, January 24, 1860, which was received and marked Exhibit , containing the following paragraph:

"We feel constrained to caution consumers of "Lackawanna coal against coals not coming from "our Company, but which are largely sold in the "Eastern States, and delivered as genuine Lacka- 137
"wanna to parties who inquire for and are led to "believe they are getting our coal. To avoid this, "buyers should ask for Lackawanna that comes "directly from the Delaware and Hudson Canal "Company."

Mr. Walter Lawton had been in the active coal business about twenty years, and was the exclusive New England agent of the complainants, at Boston and Providence, about twelve years ago. He testified as follows (fol. 148, *et seq*): 138

Q. 5. State whether or not, at that time, (that is twelve years ago), and while acting in that capacity, you had a sign painted and erected in the city of Providence for the purpose of advertising the coal of the complainants; and if so, what was on that sign?

A. I had. It was Old Company's Lackawanna Coal.

Q. 8. Why did you procure that sign to be painted and erected? 139

A. To designate the coal I was selling from what Mr. Clark was selling.

Q. 9. What coal were you selling at that time?

A. I was selling coal of the Old Company.

Q. What coal do you refer to in your last answer?

A. The Delaware and Hudson Canal Company.

Q. 12. What coal was Mr. Clark selling at that time?

A. The Scranton coal, known as the Delaware,

140 Lackawanna and Western Railway Company's coal.

Q. 13. During the time you were agent of the complainants, in New England, did you have any conversation with the officers of the Company in regard to parties selling other coal than that of the complainant's as Lackawanna; and if so, what was that conversation?

A. I did so. I complained to Mr. Souther, the Vice-President of the Company, that others were
141 selling Lackawanna coal not shipped by their Company, and wished to know, in getting up my sign, how I should designate their coal. The reply was, "Have on the sign 'Old Company's Lackawanna Coal,'" which I had done accordingly.

The testimony of Mr. Hopkins, a witness called on behalf of the complainants, and a member of the firm of Manchester, Hopkins & Company, coal dealers and complainants' agents in Provi-
142 dence, is as follows, in regard to this sign: That it is in Providence, upon a building occupied by his son and brother as a coal yard; that he thinks it was put there in 1862 or 1863, and thinks it has never been on any building excepting where the coal of the complainants was sold. (Fols. 121–123.)

Mr. Thomas N. Pearce, a coal dealer of twenty years' standing in the city of Providence, testified in regard to the sign as follows: "There is such
143 a sign there. Manchester & Hopkins and O. W. & E. A. Hopkins have occupied those premises for the past several years. The sign has been there six or seven years." (Fol. 330.)

The defendant finally took the testimony of Mr. George Beverly, a painter in Providence, who painted the sign. He said that Hopkins, of the firm of Manchester & Hopkins, brought and introduced Mr. Lawton to him; that Mr. Lawton bargained with him to make, paint, and put up a sign, which work he performed, and was by Law-

ton paid for, reading, as appears on his order book, as follows: "Old Company Lackawanna Coal, Office, Walter Lawton, Agent." That for several years past the sign in question has been on a building occupied by the firm of Manchester & Hopkins, which building is now occupied by the firm of O. W. & E. A. Hopkins. (Fols. 339, 340.) 144

IV. It was proven on the trial, beyond the possibility of question, that there has been no deceit and no fraud practiced of any description whatever on the part of the defendant, either towards the complainants or towards the public by reason of his action in the premises. 145

The allegations of the complainants' bill of complaint upon this subject were most sweeping and most unjustifiable. They were substantially as follows: That the defendant did not purchase, keep, or have for sale, any of the complainants' Lackawanna coal; that he, well knowing all the allegations of their bill of complaint to be the facts in the case, and knowing the coal sold by him did not command so high a price in the market as the complainants', persisted in the habit of "wrongfully selling and offering for sale his aforesaid Scranton and Pittston coal by the name and as and for Lackawanna coal." They added to this in their sworn bill of complaint a charge of still greater gravity, "that the defendant has been and is, as your orators are informed and believe, selling and offering to sell his said coal as and for the Lackawanna coal of your orators." They made also an allegation to this effect: "Your orators further say they never have in any manner authorized the defendant to use or apply such name to his coal, nor have in any wise acquiesced in his use thereof." And the general substance of their averment in this behalf is to the 146 147

148 effect that the whole conduct of the defendant in the premises is a wrong and a fraud upon the complainants, is so intended by him, and is persisted in by him with full knowledge that the allegations made by them in their complaint correctly represent the facts of the case. This general charge may be more conveniently treated under three heads: First, that the defendant sells the so-called Scranton and Pittston coals as and for Lackawanna, knowing that they are not
149 worth so much and do not command so high a price in the market as the complainants' coal. Second, that he not only sells Scranton and Pittston coal, so called, as and for Lackawanna, but that he sells them as and for the Lackawanna coal of the complainants. Third, that he does this without any form of authority from the complainants or acquiescence by them in his said course and without any reasonable excuse or justification.

150 So far as the charge contained in the first of these sub-divisions is concerned, the question whether or not the defendant is guilty of a wrong either upon them or upon the public in selling other coal than that of the complainants' as Lackawanna depends in the first place upon whether they have any exclusive right to the name, and, perhaps, indirectly upon whether or not their coal is of any greater value or worthy of any higher price than the coal of the other two Companies
151 mining in the Lackawanna region. The general question of the right to the name Lackawanna has already been considered so far as the facts are concerned, and will be fully treated below, so far as the principles of law applicable to the question are concerned. The discussion whether or not the coal of the complainants is of any more value than that mined by the Delaware, Lackawanna and Western Railroad Company and the Pennsylvania Coal Company, and consequently the question whether or not it is any

pecuniary outrage upon the public to sell the 152
coal of these Companies for Lackawanna, may more properly be deferred until we come under the next general proposition of fact to consider whether or not the complainants have suffered any pecuniary damage by the conduct of the defendant in selling other coal than their own as Lackawanna.

The *second* allegation, however, that he has sold, as the complainants are informed and be-
lieve, and is selling and offering to sell coal of the 153
Delaware, Lackawanna and Western Railroad Company, and that of the Pennsylvania Coal Company, as and for the Lackawanna coal of the complainants, is a much more serious one, so far as the rectitude of the defendant's position is concerned. Certainly, if the complainants could prove their coal to be more valuable than that of the other two companies, and indeed without that proof on their part, they would have a most rea-
sonable cause to complain if the defendant or any 154
other coal dealer were offering coal mined and produced by other parties as and for that mined and produced by them. Of the impropriety of such conduct there could be no two opinions. We have asserted that the terms of the bill of complaint on this subject were very sweeping and very unjustifiable; that they are very sweeping has been shown by the citations from them above; that they are very unjustifiable we will proceed to
show from the testimony. It will be remembered 155
that the complainants' bill of complaint was verified by their treasurer, Mr. Seymour. Upon his examination he was asked this question.

Q. 78. Do you know personally that the defendant has ever sold the coal produced by the Delaware, Lackawanna and Western Railroad Company, or by the Pennsylvania Coal Company, as and for the coal of the complainants?

A. Not to my knowledge.

The bill of complaint had further stated in a

156 very positive and emphatic manner that Mr. Clarke had been requested by the complainants to desist from selling this coal. Mr. Seymour upon the stand stated that he had no knowledge of any such request having been made by them. The same gentleman had alleged, on behalf of complainants, in his verified bill of complaint, that the defendant bought his coal under the distinctive trade marks or names of Pittston and Scranton coal, so given to those coals by the pro-
157 ducers thereof. Mr. Seymour stated in his examination that he did not know under what name the defendant purchased coal from the Delaware, Lackawanna and Western Railroad Company, or from the Pennsylvania Coal Company.

Having first shown that the averments of the complainants on this point had no foundation whatever in any knowledge in their possession, we next proceeded to show by the defendant himself that the charge was entirely groundless. Mr.
158 Clark was asked :

Q. 38. State whether you ever sold or offered to sell coal coming from other companies than the complainants as and for their coal ?

A. I never did.

To corroborate this proof on the part of the defendant, the circulars issued by him to his customers (during the last two years) were produced in evidence and marked Exhibits Numbers Five and
159 Six. In the one of these the only mention of Lackawanna coal is in this language : "The subscriber offers for sale Lackawanna coals from the Pittston and Scranton Companies, for steam, family and heating purposes." And in the other, the language was as follows : "The subscriber soliciting your favor, offers the following coals by the cargo at shippers' prices or in quantities to suit the purchasers ; Lackawanna, from the Pittston and Scranton Companies."

It is clear enough not only that the defendant

has been guilty of no deception, but that he has 160
taken especial care that there should be no possibility of mistake as to the precise description of coal offered by him for sale. Judge Blatchford well says in his opinion, pp. 118–119, 7 Blatch., C. C. R.):

"There is no evidence in this case to show that "the defendant has ever untruly represented "Pittston coal or Scranton coal as having been "mined or put into market by the plaintiffs, or "has ever untruly sold either of such coals as 161
"having been mined or put into market by the "plaintiffs.

* * * * * * *

"I do not see that the defendant, in what he "has done, has been acting otherwise than honestly and fairly."

The charge of the *third* subdivision above referred to under this head was, that the defendant pursued this course in regard to selling the so-called Pittston and Scranton coal as Lackawanna, 162
without any authority from the complainants, without any acquiescence by them, and without any reasonable excuse or justification for so doing.

It is asserted in the first place that the complainants have never in any manner authorized or acquiesced in the course of the defendant in selling other coal than their own under this name of Lackawanna. Sufficient has already been extracted from the testimony to show this assertion 163
to be groundless in point of fact. It has been proved, as it seems to us, beyond the possibility of a doubt, that the complainants themselves have repeatedly and habitually, during the last 20 years, sold coal mined and produced by other parties than themselves under this name. In other words, that they have done repeatedly and habitually what they now seek to punish the defendant for now doing; that if authority from or acquiesence by them in the selling of coal

164 other than their own as Lackawanna coal were needed, such authority and acquiesence is to be found abundantly in the fact that they themselves have sold under that name large quantities of the so-called Pittston coal, large quantities of the coal of Boston and Lackawanna Company, that of Eaton & Company, and of the other parties whose names have been mentioned herein above—in the fact that the defendant himself, and a very considerable number of other dealers in coal, have
165 been in the habit, and the constant habit, of selling other coal than that of the complainants' as Lackawanna, certainly for the last fifteen or twenty years, without complaint or remonstrance of any description from the complainants—in the fact clearly proven that this conduct of Mr. Clark, and of others, has been brought to the official notice of the principal officers of the Company, in a great many instances, and has been made by them the basis of such official action as the issuing
166 of a circular from their central office, expressly recognizing the title of other coal than their own to the name of Lackawanna, and expressly cautioning consumers againt buying Lackawanna coal from other parties ; and in the fact that their agent for the whole of New England (the place in which the defendant lived, and in which alone he could be cognizant of their conduct), after having in the discharge of his duties as such agent brought this conduct, on the part of the defendant
167 and others, to the official notice of the officers of the Company, was by them directed, not to attempt to punish Mr. Clark for such use of the word Lackawanna, but to advertise and offer for sale the coal of the complainants under a name different and more specific, viz., "Old Company's Lackawanna." If all of these circumstances, together with others of a like character, which have been proved in the testimony, and to many of which allusion has been heretofore made, do not constitute an authority from the complainants and

an acquiescence by them in such conduct as that 168
of the defendant in reference to the sale of this coal, it is difficult to see from what conduct on their part such authority or acquiescence could be inferred.

See Judge Blatchford's opinion, 7 Blatch., C. C. Rep., p. 116.

All this applies to the action of the complainants themselves; but apart from that, as bearing upon the question of fraud, we will call the attention of the Court to the information and the in- 169
structions received by the defendant on this very point from other prominent producers of coal, to the effect that all the coal coming from the Lackawanna region or valley was Lackawanna coal, and fully entitled to be advertised and offered for sale as such. Of course, we do not claim that testimony of this character would have any bearing upon the question of the defendant's liability, if the trade-mark in this word were clearly established; but even in that case it would have a very 170
strong bearing upon the question which we are now considering, the good faith, the bona fides, of his action in the premises. We are not now considering under this branch of the argument whether the defendant had a right to sell these coals as Lackawanna, on the bare legal question trade-mark or no trade-mark, but whether he has acted fraudulently and wilfully in so doing. We think that enough has been shown in relation to the conduct of the complainants to demonstrate 171
that, so far as they are concerned, there has been abundance both in the shape of authority, and of acquiescence, to justify it, and it has also been shown that he has been distinctly authorized and instructed by the producers of coal, from whom he has purchased the coal, in regard to which the complaint is made, to sell that coal as and for Lackawanna. The testimony of Moses Taylor has already been quoted. After stating that he has never represented the coal coming from the Dela-

172 ware, Lackawanna and Western Railroad Company to the defendant, or to others, as anything else but Lackawanna coal, and after stating that "Scranton and Lackawanna is all one and the same thing," Mr. Taylor states emphatically that that Company have sold "thousands and thousands of tons" of their coal to the defendant as Lackawanna coal, and that he (Taylor) has always bought it under that name and so used it.

173 *Lastly*, it cannot be claimed that the defendant has been guilty of any wrong in doing as he has done, when it is so abundantly proved in the testimony that his course has been that generally pursued and sanctioned by the coal trade. The testimony afforded by the statistics of the trade heretofore given need not be here recapitulated. It amounts to this, as will be remembered, that the coal of the Delaware, Lackawanna and Western Railroad Company, and of the Pennsylvania Coal Company, is placed in all the publications
174 relating to the coal trade under the name of Lackawanna, and is always so treated and spoken of. The testimony of the great majority of the witnesses called in this case on the part both of the plaintiffs and of the defendants is to the same effect. We refer especially to the testimony of Messrs. Clark, the two Pearces, Salisbury, Taylor, Dodge, Mershon, Lawton, Quintard, Hopkins, and Yellowlee. Unless the editors and conductors of those publications, and all of the witnesses we
175 have named, are wholly in error, the coal of the Delaware, Lackawanna and Western Railroad Company, and of the Pennsylvania Coal Company, is advertised and sold in the market, and is generally regarded and treated as being as fully Lackawanna coal, to all intents and purposes, as the coal mined and produced by the complainants.

V. The complainants have entirely failed to substantiate, by any testimony whatever, the allegation of the bill of complaint, that they have

suffered any pecuniary damage by reason of the 176
conduct of the defendant.

The testimony of the complainants' witnesses is unanimous to the effect that the sale of their coal is and has been largely increasing. The Treasurer, Mr. Seymour, without pretending to perfect accuracy, states their production and sale in 1866 at 1,400,000 tons; in 1867, at 1,500,000 tons; in 1868, at 1,600,000 tons, and says that in 1869 they expected to get 2,000,000 tons. In fact, we do not 177
understand that it is claimed that the action of the defendant has lessened the sale of the complainants' coal, neither is there any testimony in the case going to show that the coal of the complainants is worth any more, or commands a higher price in the market than that of the other two companies. On the contrary, the reverse of this is true, if, indeed, there be much choice between them. Mr. Moses Taylor testified that the lowest price that the stove sized coal, mined and pro- 178
duced by the Delaware, Lackawanna and Western Railroad Company, sold for during the year 1868, was $4.60 per ton, while Mr. Dickson, the President of the Delaware and Hudson Canal Company, states that their coal had sold as low as $4.35 per ton, "and, may be, a commission off." It is not thought necessary to quote here all the testimony in the case upon the subject of the relative value of the coal produced respectively by the three companies. One or two of the officers of the complain- 179
ants testified, naturally enough, that their coal was preferred, but all of the other witnesses, professing to have any knowledge on the subject, testified that there was a difference of opinion in regard to which coal was entitled to superiority,—Messrs Clark, Taylor, Dodge and others, stating that description had its adherents who preferred it. The affirmation of the complaint, to the effect that the coals of the three companies were not readily to be distinguished from each

180 other, was also demonstrated in the testimony to be true, and no evidence was offered going to show any definite superiority of one over the other, or, indeed, any decided difference between them, excepting, perhaps, the statement from one or two witnesses that the coal of the Pennsylvania Coal Company was preferable for steam purposes—the coal of the other two companies for domestic uses. For the purpose of proving that the complainants' coal had no superiority over the others, and had
181 been sold at no higher price, but absolutely for less money during the last year than the coal of the other companies, the following question was put, in the first instance, to the Treasurer, Mr. Seymour:

Q. 90. State the lowest price at which the complainants have sold their family stove coal at their offices during the past year, and the periods of the year at which such sales were made, also the number of tons of family stove-sized coal that the
182 complainants have sold and delivered at Rondout, during the past year, at the rate of $4.50 per ton, or at a less rate than that, the parties to whom such sales were made, the dates and prices at which they were made, and the amount of commission deducted?

Mr. Seymour, stating that he was not prepared at that stage of his examination to answer this question, an adjournment was had for the purpose of enabling him to do so, but upon his being re-
183 called for that purpose, he stated that he had not made such preparation, giving as a reason that he was no longer in the employ of the Company, but had left his position as Treasurer. The same question was put successively to Mr. James C. Hartt, the sales agent, and to Mr. Charles P. Hartt, the new Treasurer, who succeeded Mr. Seymour. Mr. James C. Hartt said that he had no means of answering the question—that the books from which alone the information could be derived were not under his control. Further examination elicited

the fact that such books were properly under the 184
control of the Treasurer of the Company. Mr.
Charles P. Hartt was subpœnaed, and an earnest
endeavor was made during several sittings to ob-
tain the information from him, but, after consid-
erable hesitation and a good deal of backing and
filling, he absolutely declined to answer the ques-
tion, although admitting that the books were un-
der his control. The inquiry was not pressed fur-
ther, the defendant concluding that the unwilling-
ness of complainants to furnish any evidence 185
bearing out their own allegations answered the
only purpose that he had to subserve in the mat-
ter as fully as could any positive testimony. They
had alleged their coal to be more valuable and to
bring a higher price; we had proved the lowest
price for the coal of the Delaware, Lackawanna
and Western Railroad Company at $4.60 per ton,
during a certain period. The complainants obsti-
nately and persistently refused to give us any in-
formation in regard to the prices for which they 186
had sold the same quality of their coal during the
same period. Mr. Dickson, their President, the last
witness examined in the case, did state that their
coal had sold as low as $4.35 per ton, with, may
be, a commission deducted from that price. There
can, therefore, be no question that any averment
by the complainants of pecuniary damage by
them sustained falls wholly to the ground. Their
production and sale of coal has not diminished
during the past several years; on the contrary it 187
has largely increased.

It cannot, therefore, be claimed either that the complainants have sustained pecuniary damage by any diminution of their business, consequent on unlawful acts of the defendant; at least there is no testimony whatever to that effect; neither can it be pretended that when the defendant sells the coals which the complainants call Scranton Pittston as and for Lackawanna, he is guilty of imposing upon the public an inferior or less valuable article.

188 # Points.

The following general propositions of law, applicable to this appeal, are established by principle or authority.

1. To constitute a trade mark in a name, the name must be either (1.) an *invented* one, or (2) one which identifies the maker with the article by indicating the *person* by whom made, or the *place* at which made, in other words the name must be either a *merely fancy name* or a name indicating *ownership* or *origin*.

2. A person has no right to appropriate a name which others may apply with equal
189 truth, and have an equal right to employ for the same purpose, such as a geographical name, as in this case.

3. The basis of the action of a Court of Equity to restrain the infringement of the right to a trade-mark is *fraud* or *imposition* on the part of the defendant, fraud as against the plaintiff, or imposition on the public.

4. The name must be used *distinctively* and *exclusively* in order to give a title to it.

190 5. That the right to a trade-mark may be lost by abandonment, or such acquiescence by the owner in its use, by others, as either amounts to a license to others to use the trade mark, or estops the owner from complaining of its use.

The first four of the foregoing propositions are dis-

cussed, and approved in most of the leading cases on the subject of trade-marks. Without restating these 191
propositions we quote or refer to a sufficient number of these cases to establish the soundness of the propositions.

"He who affixes to his own goods an imitation of an
" original trade-mark by which those of another
" are distinguished and known, seeks, by deceiving the
" public, to divert and appropriate to his own use
" the profits of which the superior skill and enterprise
" of the other had given him a prior and exclusive title.
" He endeavors by a false representation to effect a
"dishonest purpose, and he commits a fraud upon
" the public and upon the true owner of the trade-
" mark The purchaser has imposed upon him
" an article that he never meant to buy, and the
" owner is robbed of the fruits of the reputation that 192
"he had successfully labored to earn. * * * *
"Th re is a fraud coupled with damage"

"The principles that have now been stated as the
" foundation of the Jurisdiction of the court, are clearly
" expressed or necessarily implied in nearly all the de-
" cisions."

This is the language of Judge Duer in the leading case of the Amoskeag Manufacturing Company against Spear, 2 Sand, 599.

In Corwin *vs.* Daly, 7 Bos. by the General Term of the Superior Court of the City of New York, known 193
as the Club-house Gin Case, Judge Robertson says :

" The origin of the favor shown trade-marks was the
" protection of the public, and not merely the individual
"dealer. * * * * In Blanchard against Hill, 2
" Atk. 484, Lord Hardwicke makes the right of action
" grow out of the fraudulent design, both of putting off

"an inferior article and drawing away customers, and
194 "he possibly may have meant that either was sufficient,
"and that both were not necessary. The doctrine was
"recognized as law by Lord Mansfield, in Singleton
"*vs.* Bolton, 3 Doug. 393, and enforced in Sykes *vs.*
"Sykes, 3 Barn. 62, 541, and thoroughly sifted and de-
"fined in the elaborate and important case of Craw-
"shay *vs.* Thompson, 4 Man. and Gr. 357. In that
"case a bold attempt was made to make the defendant
"liable for the use of trade-marks, without reference to
"his intention; but it was thoroughly canvssed and
"rejected by the entire Bench, so that at common law
"an action will not lie without proof of an intent to
"deceive; and it is by no means clearly settled that
"Courts of Equity will interfere without some evidence
"of fraud.

195 After remarking that Courts of Equity will operate, by their remedial powers to prevent the continuance of a wrong, and reach the past action of the offender, even though the article sold with the simulated mark be equally good with the genuine, the Judge goes on to say:

"Every reported case in a Court of Equity, however,
"that I have been able to find, recognizes, as I construe
"them, two principles: First, the necessity of an in-
"tent to injure the originator of the trade mark, by
"passing off the wares of the vendor as those of the
"former, and, secondly, that if the trade mark consists
196 "of words they must indicate ownership and origin,
"and not merely other attributes. * * * * In
"Knott against Morgan, 2d Keen Report, 219, the
"Master of the Rolls, Lord Langdale, stated that the
"plaintiff could not have any exclusive property in
"mere words used as a title, and held the only question
"to be, whether the defendant imitated the insignia as
"well as the title. He drew the distinction between

"the abuse of a name as an instrument of fraud and
"its proper use in Croft against Day, 7 Beavan. 74, and
"distinctly repudiated any exclusive right to the use of
"a name. His very words were: 'The right which any
"person may have to the protection of this Court does
"not depend upon any exclusive right which he may 197
"be supposed to have to a particular name or form of
"words. His right is to be protected against fraud, and
"fraud may be practiced by means of a name, though
"the person practising it may have a perfect right to
"use that name provided he does not accompany its use
"with such other circumstances as to effect a fraud
"upon others.' In the case of Truefitt against Perry,
"in Vol. 6, Beavan, page 73, the same learned Judge
"exhibited dissatisfaction with Millington against Fox,
"which he seems to have supposed went to the extent
"of prohibiting the adoption of a mark by which the
"goods of another are designated, if it prejudice the
"trade of the latter, without regard to the intent of
"such use, or the circumstances accompanying it, which
"doctrine was repudiated in Crawshay *vs.* Thompson.
"He remarked no other case had gone that length, but 198
"it will be found, upon examination, no such doctrine
"was sustained in the case Millington *vs.* Fox. The
"same doctrine is laid down by the learned Vice-Chan-
"cellor of England, in the case of the Collins Com-
"pany against Cowan, and in a few lines he expresses
"the whole law of trade marks by names. He says
"'There is no such thing as property in a trade-mark
"as an abstract name. It is the right which a person
"has to use a certain name for articles which he has
"manufactured, so that he may prevent another person
"from using it, because the mark or name denotes that
"articles so marked were manufactured by a certain 199
"person, and no one else can have the right to put the
"same name upon his goods, and thus represent them
"to have been manufactured by a person whose mark

" it is.' This principle will be found not to have been
200 " swerved from in any case, whatever additional means
" may have been adopted to perpetrate a fraud. The
" same principle has been adhered to in our own courts.
" In the Amoskeag Manufacturing Company against
" Spear, 2d Sandford, 599, the late lamented Chief Jus-
" tice of this Court said, ' The owner of a trade mark
" has no right to the exclusive use of any words, let-
" ters, figures or symbols which have no relation to the
" origin or ownership of the goods, and are only meant
" to indicate their quality. *He has no right to appro-*
" *priate a sign or symbol which, from the nature of the*
" *fact it is meant to signify others may apply with*
" *equal truth, and therefore have an equal right to em-*
" *ploy for the same purpose.*' * * * In Stokes
" against Landgraaf 17 Barbour, 608, the Supreme
" Court of this State held that no property could be ac-
201 " quired in ' words, marks or devices which do not de-
" note the goods, or property, or particular place of bu-
" siness of a person.' In the case of Burnet *vs.* Phalon,
" recently decided by Justice Pierrepont in this Court,
" he holds distinctly, ' that *a manufacturer cannot ac-*
" *quire property in words known to the language, and*
" *in common use to designate things or their qualities.*"
" The Court in Thompson against Winchester, 19
" Pickering, 214, went so far as to refuse to prohibit the
" defendant from using the plaintiff's own name when it
" appeared to have come by use to signify an article
" generally, and not its mere origin or " ownership.' "

202

After remarking that all of the cases in the reports which might be cited as holding any different rule, contained certain distinctive features of their own, which sustained these decisions, as consistent with the principle above laid down, the Judge goes into an examination of a number of these cases, showing that in all of them, wherever an injunction was granted, it had been

on the ground of intentional wrong and deceit, or colorable imitation, and concludes the discussion by saying : 203

"None of the cases so enumerated, therefore, impugn "the doctrine that names having a definite and estab- "lished meaning in the language, which do not indi- "cate ownership, or origin, or something equivalent, "cannot be appropriated by one so as to exclude a sim- "ilar use by others."

And the Judge remarked that unless limited in accordance with the principle laid down by him the proposition in Fetridge against Merchant, that a name may be given to an article or compound, "every ingredient or portion of which is open to the use of every one, but the sale of which under that appellation is not lawful to any other person but the giver" is not sound; remarking, "The general rule is against appropriating 204 mere words as a trade mark."

A very full discussion of this subject is also to be found in the leading case above referred to, of the Amoskeag Manufacturing Company against Spear, in which all of the prominent cases are carefully examined by Judge Duer. The following citations are from his language in the case :

"It is sufficient to say that in all cases where a trade- "mark is imitated the essence of the wrong consists in "the sale of the goods by one manufacturer or vendor 205 "as those of another. It is only when this false repre- "sentation is directly or indirectly made, and only to "the extent in which it is made, that the party who ap- "peals to the justice of the Court can have a title to "relief. * * * * It is not to be denied that the "power of granting an injunction to restrain an unau- "thorized use of trade-marks ought to be exercised with

"great caution, so as not to transgress the limits that a
206 "just regard to the rights of individuals, and the inter-
"ests of the public must be admitted to prescribe. It
"is not to be exercised when the legal right is disputed
"and is doubtful; it is not to be exercised so as to
"create a monopoly unjust to other manufacturers, and
"of necessity prejudicial to the public."

"The positions that have been thus stated and illus-
"trated appear to me so evidently true, as not to re-
"quire any support from authority; but the authori-
"ties are, in fact, numerous and decisive, and to a few
"of the cases I shall now refer."

"The earliest case is *Singleton vs. Bolton*, 3 Doug.
"293. The plaintiff's father, and after his death, the
207 "plaintiff, had been, for a long time, in the practice of
"selling a particular medicine, under the name of 'Dr.
"Johnson's Yellow Ointment.' The defendant had
"commenced selling the same ointment under the same
"name, and for this supposed invasion of his exclusive
"right the plaintiff brought this action. Although
"these facts were proved upon the trial, the plaintiff
"was non-suited, and the non-suit was confirmed by the
"Court of King's Bench. Lord Mansfield in giving the
"opinion of the Court, said that it was not pretended
"that the plaintiff had any *exclusive* right in the *medi-*
"*cine itself*, and the defendant had, therefore an equal
"right to prepare and sell it under the same name that
208 "the plaintiff used, there being no evidence to show
"that he sold it as if prepared by the plaintiff. In
"other words, there being no false representation. In
"this case the words "Doctor Johnson" were the name
"of the inventor of the medicine, but by long use they
"had become a part of the proper name of the medicine
"itself, which name all persons had, consequently, an
"equal right to employ.

"The case of *Canham vs. Jones*, 2 Ves. and Beames
" 218, was decided by the Vice Chancellor (Sir
" Thomas Plumer) upon the same principle. The bill
" was filed to restrain the defendant from preparing
" and selling a medicine called "Velno's Vegetable
" Syrup," and it asserted that the plaintiff had ac- 209
" quired an exclusive right in the medicine itself, and
" in the use of the name by which it was generally
" known. To this bill there was a general demurrer,
" and upon the argument the plaintiff's counsel did not
" attempt to maintain his case upon the ground that he
" could justly claim an exclusive right in the medicine,
" but they insisted that he had acquired the right by a
" prior occupation, of using exclusively the particular
" name by which the medicine was called, and that the
" defendant was guilty of a fraudulent invasion of this
" right, in selling the composition prepared by himself
" by the same name. The Vice Chancellor was, how-
" ever, of opinion that, as the plaintiff had no exclusive
" right in the medicine, it was a necessary consequence
" that he could have none in the use of its name, and
" therefore allowing the demurrer. 210

" In *Perrg vs. Truffit*, 6 Beavan, 66, the plaintiff
" was the original vender of a medicine which he la-
" belled as ' Perry's Medicated Mexican Balm." The
" defendant afterwards prepared and sold the same or a
" similar medicine, which he labelled as "Truffit's
" Medicated Mexican Balm" The bill was in the usual
" form for an injunction and on account. An injunc-
" tion was denied, but although the master of the rolls,
" when he refused it, retained the bill for the purpose
" of enabling the plaintiff to establish his right by an
" action at law, he was evidently of opinion that his 211
" legal right could never be established. His opinion
" evidently was, that as the words 'Medicated Mexican
" Balm" might be just as true a description of the

" medicine of the defendant as of that of the plaintiff,
" the former had an equal right to use them. This
" opinion seems to cover the whole ground. 'Balm'
" was the general, 'Mexican Balm' the specific name of
" the medicine, and the word 'medicated' indicated its
" quality and the mode of its preparation. No action
212 " at law was brought by the plaintiff, plainly from the
" conviction of his counsel, that he could not succeed,
" and the bill was finally dismissed with costs."

The case of Fetridge against Wells, 13 Howard's Practice, 387, is authority for this proposition.

"All who have equal right to manufacture and sell the article have an equal right to designate and sell it by its appropriate name, provided such person *is careful to sell the article as prepared and manufactured by himself and not by another.*"

The case of Tomlinson against Battel, in manuscript decided by Judge Duer in 1857, holds :

" There can be no exclusive property in a generic or
213 " specific name, unless incident to an exclusive property
" in the article, composition or process, which the name
" is used to designate."

In the case of the Brooklyn White Lead Company against Masury 25 Barb. 418, Judge Mitchell at general terms uses this language :

"As they both dealt in the same article [white lead] and both manufactured it at Brooklyn, each had the same right to describe it as Brooklyn White Lead, and it is shown that many other companies had used the same designation."

214

The Judge went on to remark that the defendant had assumed a mark to which he had no title, and

which was an imitation of the plaintiffs, viz. : the title of "Brooklyn White Lead and Zinc *Company*."

"He had no such Company, and that part of his new
" title seems to have been adopted to imitate the plain-
" tiffs, and to make his paint pass as theirs. * * *

" Any *false* name that is assumed in imitation of a 215
" prior true name is in violation of this right. The
" use of it should be restrained by injunction."

The decision of the Judge was, that the defendant might continue to use the title "Brooklyn White Lead and Zinc," but must omit the name "Company."

One of the leading English cases is that of Burgess *vs.* Burgess, 17 English Laws and Equity, page 260.
Judge Turner says :

" In all cases of this kind it must be made out that 216
" the defendant is selling his own goods as the goods of
" another. Where a person is selling goods under his
" own name, and another person not having that name
" is using it, it is clear that he so uses it to represent
" the goods sold by himself as the goods of another.
" Where the two persons have the same name, it does
" not follow that because the defendant sells goods
" under his own name, and it happens that the plaintiff
" has the same name, he is selling goods as the goods of
" the plaintiffs."

The case of Williams against Johnson, 2d Bosworth, page 1, speaks with approval of the case heretofore cited, of the Amoskeag Manufacturing Company against Spear, and seems to clearly intimate that in order to entitle the plaintiff to an injunction there must be an element of fraud or at least of deception, whether inten- 217
tional or unintentional. The Court refused to decide whether the defendant might or might not use the words

complained of in any possible combination, but held
218 "that he might not use the lables, devices, and hand-bills which he was using, or any similar to them, because they were calculated to deceive the public into the belief that the soap sold by him was the soap made and sold by the plaintiff."

In the case of Edelston against Vick, 23 English Law and Equity, page 54, it was claimed that the plaintiff had a trade mark in the phrase, "Taylor's patent Pins.' The Vice-Chancellor said :

" It was next contended that the plaintiff could not
" have an exclusive right of property in the designation,
" Taylor's Patent Pins, that everybody must have a
" right to use that term. In this I quite concur, but
" other persons must so use that designation as to con-
219 " fine it strictly to a *nomen descriptionis* of the thing
" intended to be sold, and must take especial care not
" to use it in combination with other circumstances so
" as to pass off the pins thus described as being of the
" plaintiff's manufacture."

A very prominent authority upon this subject is the case of Wolf *vs.* Goulard, in the Supreme Court, 1859. 18 How. Pr. 67. Judge Ingraham there lays down these propositions :

" When a person forms a *new* word to designate an
" article made by him which has never been used before,
" he may obtain such a right to that name as to entitle
220 " him to the sole use of it as against others who at-
" tempt to use it for the sale of a similar article ; but
" such an exclusive use can never be successfully claim-
" ed of words in common use previously as applicable
" to similar articles. If the affidavits on the part of the
" defendant are correct, which state that the word
" Schnapps is used in Scheidam to designate gin, then

" the use of the words could not be restrained either
"there or here, any more than the use of the words New 221
" York gin could be claimed by any one exclusively for
" gin manufactured in New York. Words, as used in
" any language, cannot be appropriated by any one to
" his exclusive use to designate an article sold by him
" similar to that for which they were previously used."

In that case he quotes Mr. Justice Duer as holding :

" The name, no matter when or by whom imposed,
" becomes by use its proper appellation. Hence all who
" have an equal right to manufacture and sell the ar-
" ticle have an equal right to designate and sell it by
" its appropriate name, provided each person is careful
" to sell the article as prepared and manufactured by
" himself and not by another."

222

To the same effect see Burnet *vs.* Phalon, 9 Bos. 197, 198.

In the case of Clark against Clark, 25 Barbour, 76, Judge Mitchell remarks :

" Both parties deal in spool cotton. As both are of the same name, each is entitled to have his called by the name of ' Clark's spool cotton.' "

In the case of Binninger against Wattels in 28 Howard's Practice, 206, Judge Brady uses this language : 223

" The point of departure from strictly legal right
" commences when the defendants employ a label bear-
" ing a general resemblance of form, color, words and
" symbols, calculated to create the impression that their
" gin was that sold by the plaintiff and in that way
" to deceive the public."

In the case of Samuel against Buger, 13 Howard's Practice, 342, the following proposition is laid down :

224 "Where an injunction is asked to restrain a defendant from selling articles with a particular trade mark, "established by a third person, which the plaintiff claims "is in violation of his right to the use of such trade "mark, it must clearly appear that the defendant is "seeking to make sale of articles manufactured by him, "the defendant, as those manufactured by the individual who established the original trade mark, and the "plaintiff's right to the use of such trade mark must be "clear. Where, in such cases, the power of the Court "has been invoked, it has been to restrain the defendant "from making his goods and selling them *as and for the "goods manufactured by the plaintiff*, on the ground that "*such a fraud was an injury* to the *plaintiff* and tended "to *mislead* and *deceive the public.*"

225 The opnion of Justice Davis in this case commences with the following words :

"The rule governing the interference of Courts in "this and like cases, is well laid down by Justice Duer, "in the Amoskeag Manufacturing Company against "Spear, 2 Duer, 607. At present it is sufficient to say "that in cases where a trade mark is imitated the es"sence of the wrong consists in the sale of the goods of "the manufacturer or vendor as those of another, and "it is only when this false representation is directly or "indirectly made, and only to the extent in which it "is made, that a party who appeals to the justice of
226 ' the Court can have a title to relief."

A further reference to authorities becomes unnecessary, the cases cited adundantly sustains our propositions.

It is difficult to see the slightest difference of princi-

ple between these cases and the one under discussion. The complainants, on the one hand, and the so called Scranton and Pittston Companies, on the other hand, mine their respective coals in the same valley or region, the Lackawanna. The article named and produced by each of the three companies is the same, namely, anthracite coal and each, therefore, under the principle of the decision, has a right to call its product "Lackawanna coal." 227

So far as this principle has been carried that, as has been heretofore shown, the Courts have refused to enjoin the defendants from using the plaintiff's own name to designate the article produced by him, where, by long and general use, the plaintiff's name had become identified with the article in question itself, and not with any particular quality or description of it.

It certainly cannot be questioned, under the testimony in this case, that the name "Lackawanna coal" has, in the general understanding of dealers in and writers on coal, become the proper designation of all coal mined and produced from that valley or region, no matter by what parties it is mined, brought to market or sold. 228

All the cases hold that to entitle the complainant to an injunction, there must be, if not some elements of fraud, at least some deception, whether intentional or unintentional. There must be some evidence of design to deceive the public or to wrong the original producer by passing off an article not produced by the original manufacturer as, and for, his.

In all of the cases heretofore cited, comprising the principal decisions on this point, both in England and our State, wherever the subject has been noticed at all, the principle has been broadly laid down that an injunction will be refused unless there is something in the 229

conduct of the defendant calculated to lead the public
230 to believe that the goods sold by him under a certain name are those produced and offered for sale by another. Where there is no possibility of deception the injunction will be denied.

No one of the cases cited on behalf of the complainants in the Court below indicates any different rules, and the greater portion of them, and all of those that have any special bearing upon the case under discussion, specifically enforce them. The case of the Brooklyn White Lead Company against Masury, 35 Barbour, 416, has been already cited on behalf of the defendant. The complainant's brief below stated that the defendant in that case was restrained from using the word "Company," but as has been already shown, he was so restrained because he was not a company, but an in-
231 dividual manufacturer, and because the application to his goods of the phrase "Brooklyn White Lead and Zinc Company," really displayed a design on his part to pass his goods upon the public as those manufactured and produced by another.

In the Case of Burnet against Phalon, 9 Bosworth, previously alluded to, the plaintiff had adopted as the name of his hair oil the designation "Cocoaine;" as the defendant afterwards adopted as the name for his, "Cocoine." He was restrained by the Court on the ground that this was a colorable and inferential fraudulent imitation of the name used by the plaintiff. It
232 is well to notice that even in this case Judge Robertson, who pronounces the decision in Corwin against Daly, dissented from the opinion of a majority of the Court, on this ground :

"That the device used by the defendants to indicate "their manufactures is a word either actually in use "to express natural, component parts, quality, or use

"of the article, or capable of being formed, according
"to the analogy of language, from other words as a
"different part of speech, and if the plaintiffs have
"only adopted the same word, inserting a letter there-
"in, in inventing their mark, so as to deprive it of
"its character as a word, the question would arise
"whether the defendant could be deprived of the right 233
"to use the combination of letters forming such word,
"because it might resemble the device so adopted. *
"* * * * The question, therefore, comes back to
"the same point, whether the plaintiffs, by adopting
"the letters 'Cocoaine' in the order in which they
"did, precluded all the world from using the word
"'Cocoine' to designate an abstract of cocoanut oil.
"* * * * It is plain that the plaintiffs could not
"prevent the honest application by the public of the
"term 'Cocoine' to an extract of cocoanut oil, or any-
"thing of which it was the principal ingredient, or the
"sale of such commodity by that name." 234

The next case cited by the complainants was that of Howe against the Howe Machine Company, 50 Barbour, 236. In that case the decision was expressly put upon the ground of fraud. The language of Judge Sutherland is as follows:

"The plaintiff had a right to adopt and appropriate
"his surname as a trade mark and it cannot be said that
"Elias Howe, Junior, though his surname was the same,
"had the right to use his own surname in such a way as
"to deceive the public and deprive the plaintiff of the
"benefit of the notoriety and market which his machines
"had gained."

In other words, while the principle of law is perfectly clear, as has been already shown, that one party has a 235
perfect right to use his own name as a trade mark in regard to a certain article, even as against another party

whose name is the same and who has previously manufactured the same or a similar article he has no right to
236 use even his own name in such a manner as to lead the public to suppose that the article which he is offering for sale is that actually manufactured by other parties. The decision is put expressly upon the ground of fraud. The public are not to be misled, they are not to be deluded into the belief that they are purchasing an article manufactured by a person other than the one professing to manufaeture it, even though the proper name of those two parties be the same. The case, therefore, stands entirely upon the ground of fraud—upon the ground that an attempt is made to deceive purchasers as to the actual producer or manufacturer and not at all upon the general principles of law in regard to trade marks. The case of Newman against Alvord, 49 Barbour, 588, cited by complainants, is an authority directly in point, as is evident even from a quotation of their own language in
237 their Brief, which is as follows :

"The plaintiff made lime at the town of Akron and "he called it 'Akron Lime,' and the defendant called "his lime, *which was made elsewhere*, by the same "name, and he was restrained."

It is precisely as though the defendant in this case had sold coal produced from regions other than the Lackawanna Valley, as and for coal coming from the Lackawanna Valley ; and the decision in this case of Newman against Alvord is based specifically upon the fact that the selling as Akron lime of lime made in
238 other districts was a direct fraud upon the public This is one of the cases upon which the complainants appear specially to rely. If the proof disclosed that the defendant had been in the habit of selling, or ever had sold, as and for Lackawanna coal coal not mined or produced in the Lackawanna Valley, this decision would have been very much in point. Under the circumstan-

ces disclosed it amounts just to this, that as against a party mining, manufacturing or producing a certain article in a certain district and selling it under a certain name, another party mining, manufacturing or producing the same article from another and entirely distinct district, has no right to appropriate his name. The decision of Judge Daniels founds the right to the extension upon the fact that the name of Akron lime "designates the origin of the article made and dealt "in by them, as well as its place of manufacture. "Within the settled rule of the law governing trade "marks, it was appropriately used in these respects. "The inability to make such appropriation of them arises "out of the circumstances, that, on account of their "general or popular use, every individual in the com- "munity has an equal right to use them, and that right "is in *all cases paramount to the rights and interests of* "*any one person, firm or company.* What may alike "be claimed and used by all cannot be *exclusively* ap- "propriated to advance the interests of any person." 239

"Numerous cases have been before the Courts in "which this limitation upon the use of words and "names as trade-marks, has been maintained and estab- "lished, and no good reason can be given questioning or "impeaching their conclusions." 240

The decision of Justice Duer in the case in 2nd Sanford, 607, is cited with approbation, that:

"The essence of the wrong consists in the sale of the "goods by one manufacturer or vendor as those of an- "other, and it is only when this false representation is "directly or indirectly made, and only to the extent to "which it is made, that a party who appeals to the "justice of the Court can have title to relief." 241

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The judge further states the limitation to be, that the party claiming a trade mark shall not

"Appropriate a sign or symbol which, from the na-
"ture of the fact which it is used to signify, others may
"employ with equal truth, and therefore have an equal
242 "right to employ for the same purposes."

The decisions which have heretofore been cited in support of this principle are many of them quoted at considerable length in the opinion of Judge Daniels, especially the case of Croft against Day, where it was stated as has been heretofore cited, that the right which any person may have to the protection of the Court is a right "to be protected against fraud."

The case of Gillott *vs.* Esterbrook, 47 Barbour, 455, cited in the brief for the complainants below will also be found to fully substantiate the propositions of law for which the defendant contends. The decision of the Court is expressly put upon the ground that there is a design shown on the part of the defendant to defraud. The language is:

253

"An injunction will be granted where the design of
"the defendant to defraud by manufacturing and pack-
"ing an article under a trade-mark in all respects simi-
"lar to the plaintiff's, except only the use of the name,
"plainly appears."

The especial attention of the Court is called to the decision of Judge Leonard, on the 480th page, which is placed distinctly upon the apparent evidence of intention to defraud. Even upon this view of the case Judge Ingraham dissented, holding that:

244 "There was error in holding that the plaintiff, by the
"use of a special number, became entiled to the exclu-
"sive use thereof and to the profits thereof."

The complainants seem specially to rely upon the case of McAndrew *vs.* Bassett, 10 Jurist, N. 245
S., 550. This case, like those heretofore noticed, was decided by the Court in favor of the plaintiff, simply upon the ground that there was apparent and evident intention to defraud both the plaintiff and the public by the use of an inappropriate and false name.

The plaintiff had made liquorice from certain roots coming from a district known as Anatolia, and labelled that product by the name of the country from which the herbs came. The defendant, procuring herbs from Spain for the purpose of manufacturing liquorice, labelled his production Anatolia. He was not only violating an alleged trade mark, but his designation was false in fact It is true, as the complainants assert, that the plaintiff in that case had applied the word of a country to his own peculiar production. He had an undoubted right to an exclusive use of that word as against parties 246
manufacturing a product not coming from that country or in any manner connected with it. That this was so, the complainants in their Brief carefully omitted to state. They left the Court to infer that the decision in McAndrew against Bassett is to the effect that the name and country common to all could be exclusively appropriated by one individual. An examination of that case will satisfy the Court that no such decision was made and no such proposition was considered.

The plaintiff procured the herbs from which his product was manufactured from Anatolia and called them by that name properly and rightfully; the 247
defendant produced a similar article of liquorice, made from herbs coming from another country, and called his product Anatolia, which apart from any infringement of the plaintiff's right in that name, was in itself a falsehood and a fraud.

So, too, in the case of Sykes against Sykes, Barnwell and Cresswell, the decision was placed upon the ground of fraud. The principle of this case will be found to be precisely identical with that laid down in the case of Clark against Clark in this State, previously cited, namely, where a design to defraud and deceive is shown the
248 defendant may not apply a proper name to his production even though that proper name be his own. In other words, in this as in all other branches of the law, proof of fraudulent intention may taint conduct otherwise most proper and natural.

X See note X

Our *fifth* proposition, that the "right to a trade mark" may be lost by abandonment, or such acquiescence by the owner in its use by others as either amounts to a license to use the mark or estops the owner from complaining of its use," needs no citation of authority to support it. If the complainants ever had such right, as they claim, to the exclusive use of the word "Lackawanna," they have acted in such a manner as to estop them from claiming such right as against the respon-
249 dent.

Judge Blatchford without considering the other questions involved in this case, bases his decision on this proposition. He says, "I have come to the conclu-
"sion that, upon established principles of equity
"jurisprudence, the bill in this case must be dismissed
"on the grounds that, whatever right or title the
"plaintiffs may have had, as against the defendant, to
"the exclusive use of the words "Lackawanna Coal," as
"a trade mark, their acts, in regard to his use of those
"words to designate coal soldby him which was not coal
"mixed or put in market by the plaintiffs, have a-
250 "counted to a license to him to use those words to de-
"signate Scranton Coal and Pittston Coal, and thus to
"an equitable estoppel against their claim to the re-
"lief prayed for by the bill. (7th Blatchford C. C. Rep.
"116.)"

In conclusion we claim in the language of Judge Blatchford below that, "To grant the prayer of the "bill, namely, to enjoin the defendant from continuing "to keep up the signs referred to, bearing the words "Lackawanna Coal," and, from advertising "Lacka- "wanna Coal" for sale, and from selling, Scranton Coal "or Pittston Coal as "Lackawanna Coal," and to com- 251
"compel him to pay to the plaintiffs the profits he has "derived from the use in his business of the words "Lackawanna Coal," in the way in which he has used "them, and from the sale of Pittston Coal and Scran- "ton Coal, under the name of "Lackawanna Coal," "would, therefore, be a violation of every true principle "of Equity."

The decree of the Circuit dismissing the bill with costs, should be affirmed with costs.

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WILLIAM FULLERTON,
HENRY E. KNOX,
Of Counsel.

Note.

See also the following cases published since our brief was printed:

Watkinspoon vs Avrie, known as the Glenfield Starch Case, in which the opinion of Vice Chancellor Malins, 22. L. J. R. 260, was reversed on Appeal, 23, L. J. R. 443.

Candie et al vs Deere et al; known as the Moline Plough Case, in which the Supreme Court of Illinois reverse the judgment granting an injunction of the Circuit Court, Ill Reps

The congress and Empire Springs Co vs. High Rock Congress Spring Company

New York Court of Appeals, decided April 4th 1871. not yet published. reported.

Handel

11 Jurist N S 67 B

Land Ref Act No 446

Lop Consolidation —

Lot Case

See Kiely

Land Reg 5 Ch 155

American Trade

Mark Cases —

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Rowland Lop